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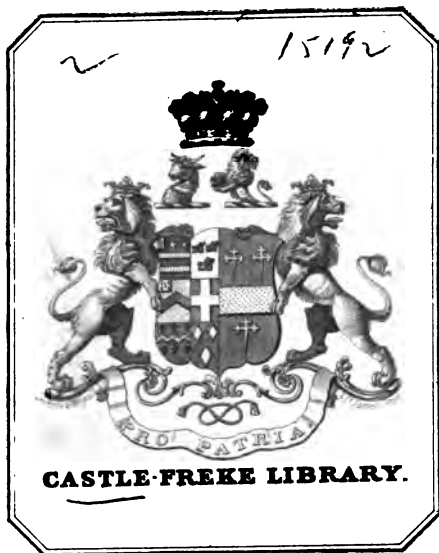
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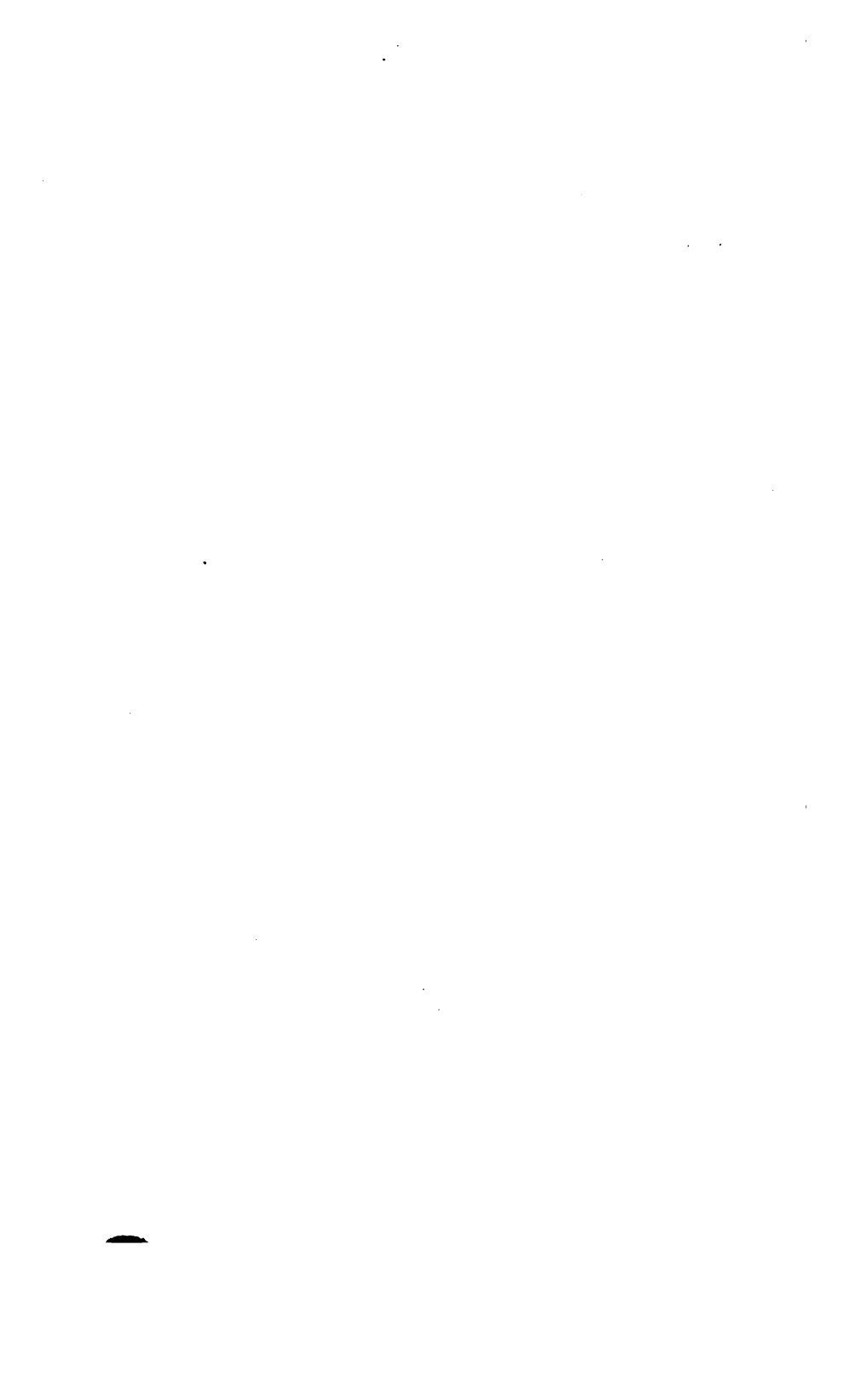
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AN
APPEAL
TO THE
PUBLIC,

64 BY
GEORGE ROBERT FITZGERALD, Esq.

IN WHICH IS OCCASIONALLY INTRODUCED
THE
Constitutional Doctrine of Indictments
AT COMMON LAW,
IN CONTRADISTINCTION TO THOSE OF
STATUTE LAW.

*Sed si tantus Amor casus cognoscere nostros,
Quamquam animus meminisse horret, Insuper refugit
Incipiam*—————

Virg.

23
—————
DUBLIN:

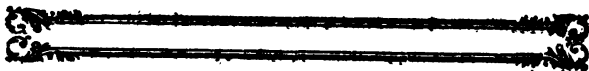
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AN
APPEAL
TO THE
PUBLIC.

FREQUENTLY revolving in my mind many private quarrels and deadly feuds, which have unhappily disturbed the peace and good harmony of some of the best and most illustrious families in Great Britain, as well as in this kingdom, within the short period of my own existence; I have ever remarked, that it hath been the constant practice for the

A 2 aggressors

Copy to T. Ward 1945

aggressors in these unnatural dissensions, who can neither justify their conduct to their own conscience, nor appeal to the public in an open candid manner, have always had recourse to the pitiful subterfuge of prepossessing and poisoning the sentiments of the people at large, with every species of falsehood and calumny which the fertile wickedness of their own hearts can invent and disgorge. Happy, indeed, if in the cause of truth, whether we vanquish, or be vanquished ; it is the very nature of falsehood to be incoherent and self-destructive, and the best-devised and most subtle calumnies are seldom or ever of any long duration. It is for this reason, that although I find myself neither gifted with the forcible or persuasive powers of oratory, nor blessed with a copiousness of thought, or fluency of words ; and though I labour under an accumulation of difficulties, apparently insurmountable, yet I most certainly trust, I shall be able to vindicate myself before an impartial public,

public, since my confidence and firm assurance rests not on the meretricious brilliancy of eloquence, but on the solid, unshaken basis of truth, whose high prerogative it is, always to defend itself with its own light, its own clarity, its own conviction.

If not a peculiar, it is, at least, an inexpressible grief for me, that in the course of this my intended exculpation, I shall be obliged to expose to public view the dreadful effects of a family-quarrel, which neither the flagrant injuries I have suffered in my landed property, nor the indignant outrage that I have sustained in my person, would have constrained me to do, and which had been buried in perpetual forgetfulness and forgiveness on my part, had not the irresistible impulse and fervent desire to stand well in the good opinion of my king and my country overbalanced every private motive, and outweighed every other worldly consideration. I would therefore, with-

out farther loss of time, submit every step of my conduct, throughout every stage of this unhappy family-quarrel, to the final decision of the public,—a tribunal, always impartial when well informed, not in the least doubting but that the part I have acted in it, will, on the strictest investigation, be found commendable in most instances, reprehensible in very few, criminal in none. But the groundless charges, and most false accusations, which have so industriously and maliciously been ventilated abroad against me, are so numerous and various in their different modes of attack upon my character, that I profess I am at a loss to know where or in what manner I shall begin my defence, or which of the charges brought against me I ought first to silence. For my present situation seems like that of a person wrecked at sea, who, the very instant he hath buffeted and overcome one billow, hath another and another still before him to encounter, and he knoweth not whether the

the last which he hath to surmount, be not of greater weight and moment than all the preceeding mountainous waves he may have already vanquished and subdued. But I thank my God, I see the wished-for haven near at hand,—that haven, or HEAVEN, as it more emphatically might be called, is the candid, impartial judgment of the public, a public always ready, not only to receive with open arms, the unjustly overwhelmed and oppressed, but to grant them a safe and honourable protection against the pestilent storms of envy, malice, violence, and detraction. To that tribunal I now submit my cause; and as I should not be justified to my own conscience, were I to lay before so truly august and unbiassed a court, only a few garbled specimens of the almost innumerable acts of injustice, (as well of a *public* as of a *private* nature) which have been done to my person, my property, and my honour, I must crave leave of that public to give them a whole and true narrative

of my case, which, long and tiresome as it may seem in the perusal of it, yet as it involves in the individuality of its narrow circle a CROWN-LAW adjudication, fundamentally and constitutionally illegal, and which, if not reversed, may at a future day be cited as a precedent destructive of the personal liberty, and ruinous to the fortunes of ourselves, and even our posterity, it is hoped with the greatest deference, and most respectful submission, that this present publication will not appear altogether unuseful, nor totally unworthy of the attention and sanction of the public.

To give, then, as concise a detail as the nature of this unhappy subject will allow, it may be proper to observe, that the *principal* actors in the following scenes, are three in number, namely, Myself, Mr. Charles Lionel Fitzgerald, (once, alas! a most cordially and dearly beloved brother), and a third person whose name shall never be mentioned
by

by me, but with that reverential tenderness and filial regard which a dutiful son, be the injuries he may have received ever so enormous, will never omit to pay to so sacred a character as that of a father. It would be ill-judged, I apprehend, to mention the minutiae of this family disunion, since such a procedure might eventually tend rather to widen the breach than answer any important end. Suffice it, therefore, that instead of setting forth my case at large, in this part of my defence, I for the present only state the pith and very marrow of it, as it were, reducing it under the three following general accusations, with which Mr. Charles Lionel Fitzgerald is pleased to calumniate my reputation, with the most envenomed and unceasing rancour of heart, in whatever company he either finds or can possibly intrude himself.

The *first* charge is, That without the least shadow of any right on my part,
I have

I have forced and compelled an aged parent into an expensive Chancery-suit ; and that I am the primary and sole cause of *all* the quarrels which disunite, distract, and disgrace our family.

The *second* is, That I had actually imprisoned my father in my own house, at Rockfield-lodge, and that having an interest and advantage in his death, by obtaining the immediate possession of a very considerable estate and land-property, I had made away with my father, and deprived him of his existence, by having caused his life to be taken away, at my instance, and by my directions, as the said Charles Lionel Fitzgerald, ON HIS OATH, apprehends and VERILY believes.

The *third* is, That Mr. Charles Lionel Fitzgerald's accusation against me must be true, and will admit of no contradiction nor palliation whatever, because a verdict hath been found against me,

me, and that in consequence of such verdict, I have received judgment of the court, by which I am sentenced to three years imprisonment, besides the additional punishment of paying a fine of one thousand pounds to the king.

To each of these accusations, I propose to give a separate, distinct, and satisfactory answer.

As to the *first*, namely, That I had forced my father into an expensive Chancery-suit, without any just grounds, I will own, that if an application to the Court of Chancery, *praying*, that there might be an order for settling all accounts between me and my father; or if upon settling such accounts there had appeared a very considerable or long outstanding balance due to my father, I then will allow indeed, there had been some foundation for the charge against me. But what must the public think of the speciousness and malevolence of my

my accuser when they are informed that the application to the Court of Chancery was made at the special instance, and most pressing request of my father, and that there was due to me a balance of five thousand eight hundred pounds and upwards,—a balance delivered in, and acknowledged by him in presence of a third person, as the ground-work and basis of an *amicable* application to the Court of Chancery.—This it possibly may be said is a very large sum, and the public whom I have now constituted my judges, ought to know as well the nature as the justice of the demand I have upon my father's estate. To satisfy them in this respect, recourse must be had to certain marriage-deeds of our family, extracts from which will afford all such leading proofs as may be requisite for their elucidation and information.

On my father's intermarriage with Lady Mary Harvey, sister to the Earl of Bristol, in consideration of £7000.
paid

paid to him as my mother's marriage-portion, of the yearly rent of £600. per annum, certain freehold lands were settled on her ladyship in jointure, with remainder over to their eldest son in absolute fee,

On my own marriage, which took place in the year 1770, in order for me to make a settlement, it became expedient to make new arrangements, and new modifications in the family-estate. For this purpose, in consideration of my releasing my title to the remainder in fee aforesaid, and on paying to my father the sum of £8000. sterling, we levied a fine, the uses of which, so far as they concern me and my father, are declared to be, that I shall be paid a clear, neat rent-charge of one thousand a year for my life, with clauses of distress and entry, and with remainder over to the issue-male of my body, by that or any other subsequent marriage, together with the reversion of the residue of the whole estate

estate in fee to me, in tail male, after my father's decease: but in default of issue-male by my first or any subsequent marriage, then the whole family-estate to revert to my father in fee simple, subject to the payment of £10,000. to my daughter, and £5000. to me, or to my appointment.

Thus stands the family-estate between me and my father; and as it may with the strictest propriety be said, that when my father granted me the rent-charge above-mentioned, he received the full value for it in money actually paid by me, and that considered as a purchaser, I really had the worst of the bargain, it is but just, that I should have been paid my rent-charge regularly and punctually, as it became due. But the truth is, my father stands now indebted to me in the article of arrears, and for sums of money which I have at different times either paid to him, or for him, the full amount

amount of twelve thousand pounds sterling.

My judges will easily conceive the many difficulties I must have been put to, by my father's having thus withholden from me for several years the payment of my annuity; and I can scarcely express the secret pleasure on the first overtures my father made of his most earnest wish and sincere desire to pay me. If this pleasure was afterwards much allayed, it was through my father's giving me to understand, that the sole and real cause of his being considerably in arrear to me, was entirely owing to the profligate dissipation and incorrigible villainy of his abandoned son, Charles: and that he did not use these seemingly harsh terms merely because that worthless wretch (as he then called him) had married a little child of thirteen or fourteen years of age, without a single shilling, but that he had married into a puritanical, rascally family,

mily, and without his consent ; that he had undone and ruined him to all intents and purposes : that in the absence of my father, having had the presumption to go down to his country-house, there was no kind of folly, debauchery, and madness, his son Charles had not been guilty of there ; all the while, keeping open house and entertaining at free cost, all the unprincipled, gambling, swindling young fellows, of the neighbouring towns he could possibly assemble together, who, in their mad frolics, had either broken all the furniture of his best rooms, or utterly spoiled it with their dressings and powderings, or what was still worse, with the filthy disem-boguings from their overgorged stomachs : that they had either drunken, or, like true bucks of the first head, as they boasted themselves to be, had gloriously set a-float all the liquors in his cellars, there not remaining one single bottle of wine, beer, rum, or brandy, which had escaped their unparalleled brutality and
 insanity :

infanity: that he had either swapped, or challenged away all his horses: that he had received my father's rents without any order for so doing, and had left every debt he had contracted in the country unpaid: that on his return to Dublin, his conduct was, if possible, still more scandalous and *outrè*, wantonly and wildly squandering away every guinea he could rap or rend upon the lowest and most infamous prostitutes in the town, like another Macheath, bedizen- ing his Chapel-izod seraglio, with silk- gowns, silk-stockings, and other glaring, gawdy, ill-suited apparel: that the public prints teemed every day with advertisements for retrieving watches, seals, and other lesser articles of bijouterie, which in the frequent paroxysms of his nocturnal intoxications he had been robbed of, by the numberless *impures* he constantly and openly assorted with, or by their nimble-fingered associates or bullies: and to crown the character of so young, and yet so accomplished a

B

villain

man myself, and a father too, owing a nearly equal, if not a prior, duty to my own offspring, I studiously avoided to re-visit my native country. *Oh! dulce, et natale solum!* Two events however occurred at one and the same time, which powerfully induced me to alter my former resolution in this respect. The first was, that I had received a letter from Mr. Charles Fitzgerald, in which he informed me of several of his juvenile flights, and that *inter alia et super omnia inexpressibilia*, he had married a young lady without one single shilling fortune, and without the previous consent of my father, which want of filial respect and duty, had so exasperated and alienated the affections of the old gentleman, that he was well assured, from other persons, and firmly convinced in his own mind, that his father never would, nor indeed with propriety ever could, see him more: adding farther, that he was now without friends, without money, without credit, and in this forlorn situation he
had

had no port, no haven, no sheet-anchor to rely or depend upon but me, and only me. He therefore begged and entreated, and begged again, I would deign to give him that brotherly countenance, which, were I in his circumstances, he assured me he most certainly would, in brotherly charity, extend to me,

The *second* event was of quite a different complexion. That angelic pattern of her sex, (still, still the dear object of my congenial soul!) to whose rare virtues and indelible memory I pay these tributary tears, now gushing from my eyes; this blessed angel! to whom I was then united in all the endearing bands of wedlock, had received letters of invitation from her sister, the Countess of Buckinghamshire, requesting our presence at the Castle in Dublin. The Earl of Buckinghamshire was newly seated on the vicarial throne of this kingdom, and we arrived here with uncommon dispatch to congratulate a most affectionate sister, to add to, and

participate in, the brilliancy of his Excellency's court. This seemed to be a favourable opportunity for me to be of some real service and utility both to my father and Mr. Charles Fitzgerald. Accordingly, within a few days after my arrival in Dublin, I had the heart-felt satisfaction, not only of demonstrating to Mr. Charles Fitzgerald that I was still his brother, but I had the additional happiness of reconciling him to a parent, whose affection he but too justly forfeited by his profligacy and unparalleled debaucheries. Yet was I not able to effect this good work of brotherly love, until (as my last persuasive and enforcing argument) I had assured my father I would positively return either to England or the continent, after having paid my ceremonial visits at the Castle, and to my relatives and affines, if he still persisted in not suffering the new married couple to be admitted into his presence, or any longer debarred them the participation of his parental blessing and forgiveness.

Speaking

Speaking my mind on this subject with much firmness, I at length, after the greatest difficulty imaginable, prevailed on my father to relax from his rigid sentence ; and thus I may truly be said to have restored the prodigal lost son, to the open arms of a justly offended parent.

From the foregoing statement of facts, which are literally true, I have every reason in my own conscience to flatter myself, that my judges will not hesitate to allow my conduct to have been that of a dutiful son, a good brother, and a happy peace-maker, as far as lay in my power,—characters I have always ambitioned, and which I shall ever studiously endeavour to deserve ; and my judges, I hope, will do me the farther justice to allow, that the above-mentioned application to the Court of Exchequer, though acceded to, yet was not *first* suggested by me, and consequently it ought not to entail upon me the public odium of

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having

having litigiously *commenced* a law-suit against a parent.

This false, this foul assertion, thus clearly wiped away, it behoves me now to refute the remaining part of this charge, by which I am accused of being the primary and sole cause of all the quarrels that disunite, distract, and disgrace our family.

This part of the charge, were it founded in truth, would be a poignant and poinarding accusation indeed: and I call it such, because I define a family-quarrel to be, that ill-blood which, subsisting between persons bounden together by the ties of consanguinity, rarely is known to cease or to abate, until one or more of the family shall have fallen a victim to the other, by the loss of character, property, or life. And this ill-blood is what our ancient law-books call a *deadly feud*, in contradistinction to those lesser quarrels in common life,
which

which generally terminate without any injurious or fatal consequences. Agreeable to this definition, if my accuser hath justly accused me, then must I have been the primary and sole cause of the family-quarrel between my late grandmother and my father, and of that between a nearer and dearer relation, whose name I will not contaminate, by mentioning it in the same breath with that of my father's ; and of that between Mr. Charles Fitzgerald and my father. With respect to the first quarrel, I have only to say, that I was not yet born when it commenced, and I had no other share in it, but that of advancing to my father large sums of money, to discharge the arrears of my late grandmother's jointure, the half-yearly payment of which, when living, she never could obtain, but by mere dint of law.

As to the *second* quarrel, I could have wished to have drawn a veil over it, but self-justification compels me to say, it cannot

him in return. Nay, were he even to strike me a blow, I will follow his precept to me, not his example. I will not draw my sword upon an aged parent, as once he rashly did; and to which cause, he hath frequently told me in his lucid intervals of reflection, he imputes all the disunion and discord that hath befallen him in his own family, as a just retribution and paternal curse for so undutiful and unpardonable an act.

Come we then to enquire, whether my father hath any just grounds for bearing any ill-blood towards me.---I have already observed, we had agreed upon an amicable application to the Court of Exchequer, and that in consequence of it, an order had been obtained, empowering me to distrain for my annuity, and all such arrears as remained due to me and unpaid, notwithstanding the numerous custodiams which would then have taken effect, but for the priority and precedence of my demands upon the estate.

estate.—These preliminary steps thus taken, my father's next request was, that I would nominate and appoint some person of the law to accompany me into the country, in order that I might receive and give discharges for my rents with regularity, and in terms more technical than I might otherwise have done in some particular instances without such law-assistance. Mr. Tisdal, one of my law-agent's clerks, attended me into the country for this special purpose. Thus far all was well, and my father and I went hand and hand together. An intervening, unwelcome circumstance interrupted this reciprocal harmony, and laid the first foundation-stone of my father's ever having taken any thing amiss or unkindly of me before. On my arrival in his neighbourhood, I was given to understand, that one Miss Lyons, a decayed common prostitute, was publicly cohabiting with him, at his house in the country, and that he was either so infatuated to her, or so afraid of her abusive

five tongue, he did not dare to open his lips, but when she should please, and as she should direct and order, being entirely under her management, controul, and governance. On this intelligence, I could not possibly think of taking up my quarters at my father's house; the love, the duty, the gratitude I owed to the best of mothers, for her singular tenderness and affection towards me in every trying situation of my life, and in particular for the noble and generous assistance she afforded me when I lay at the point of death at Brussels, and for which I now most gratefully return a thousand and thousands filial acknowledgements: These considerations, I say, would not permit me to shew any countenance to a vile adultress, who now was mistress of my father's house; nor could I with any decency, as Lady Mary's own and only son (for she *now* considers Mr. Charles Fitzgerald as an irrecoverably lost sheep) suffer it to be said, that I had knowingly and wilfully ever slept one night under
the

the same roof with a veteran hagg of a strumpet, where, of right, I ought only to have found the most virtuous and most accomplished of her sex. Accordingly I and my attendant, Mr. Tisdall, made the town of Castlebar our temporary residence.

Though I did not mention to my father my reason for not making his house my home, yet, as a man who formerly had been in the fashionable world, he could not but see, if not applaud, the fitness and moral rectitude of a decency and delicacy which seemed to me to be indispensibly necessary.—My conduct, however, on this occasion, had the misfortune to give the highest offence to the termagant and Wapping landlady of my father's dwelling-house, or house of ill-fame, as more properly it might be called. The furies had seized the beldame; all was uproar within doors; she was sure I had shewn her this personal contempt on purpose to affront her, and to affront her

her in the grossest manner.—It was galling to the quick; it was insufferable; it was unpardonable; and if my father did not resent, and with interest repay this indignity, which had lowered him as well as herself, in the estimation of the neighbourhood, she would not cohabit with him a moment longer. So true it is, when once a woman hath forfeited her own honour, the transition from one [species of criminality to another, and another of a deeper and still deeper dye, grows easy, familiar, and habitual to her, till at length she becomes in realization worse, if possible, than a roaring lioness, seeking night and day whom she may devour.

It now happened to my lot to be the devoted object of this Kakadæmon's malice and implacable revenge. It was, however, judged not proper to crush me all at once. I had not yet received a single shilling rent myself, and it appeared
to

to her a master-stroke of art, if she could so contrive it, as to receive the whole rents herself for her own proper use and behoof, and to put me to my action of trover and conversion for the recovery of it afterwards. My father, who lent his name to carry on this dishonest and dishonourable scene of fraud and deceit, I rather pity, than presume to reproach or upbraid. For, acting under the absolute controul, and imperative command of his *Mistress*, as he undoubtedly did, he could not, strictly speaking, be considered as a person *sui juris*, I therefore acquit him, heartily wishing the rest of mankind may be as lenient and indulgent to him as I have been.

A plan for my ruin having been thus pre-concerted, the first step to be taken was, for my father to express his desire that Mr. Tisdall should come to his house, and receive the rents there.—— Not suspecting that any such knavishness and treachery had been hatching

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against

against me, I readily consented, and Mr. Tisdall received instructions from me to attend every day at my father's house, which he regularly did for near a fortnight, during which time he had not received any rents. And well he might not, for, upon enquiry, he found that Miss Lyons (as the vile prostitute is called in that neighbourhood) stopped the poor tenants on the road as they were going to the neighbouring markets to sell their little merchandize, in order to make up their respective rents, and under false pretences took it from them, without giving them any receipt for it.

On this scandalous treatment, I thought it my duty to expostulate with my father: I told him, that, in two or three terms, I might probably be called upon, in open court, to specify and account for such rents as had been paid in by the estate, and that if I connived at what had been done, it might furnish a handle for the custodiam-creditors to suggest that

that we were acting in collusion to cheat and defraud them.—I therefore begged and entreated, that he would permit my agent, and no other person whatever, to receive any more rents, adding, that if he wanted money for his own occasions, I would give it him out of my own pocket, and carry it to a separate account between him and myself.

The batteries, which had only been masked before, began now to thunder upon me with vengeance and unremitting fury from every quarter. There was no kind of abuse or foul language, copiously interlarded with the most blasphemous expressions, which that infamous adulteress *Mother* (for I will not call her *Miss*) Lyons did not volley from her pestiferous mouth, and v-m-t forth against me.—My father caught the infection, and, forgetting the dignity of a gentleman, flew into all the rage and fury of a madman, swearing bitterly, and threatening, that if neither he, nor that *good woman* (mean-

ing the wretch above-mentioned) could bring me to a sense of the duty I owed to him, and the respect I owed to her, he would send to Dublin for the man who would soon master me, and should keep (as he politely termed it) my very nose to the grinding-stone. This was no sooner said than done. The bully, Mr. Charles Lionel Fitzgerald, was immediately sent for, and arrived, as it were, on the rapid wings of the wind,

Ocior cervis, et agante nimbos
Ocier Earo.

During this whole war of words, happily, I never once lost the trammon-tain,—I remained cool and calm, and determined to observe the same evenness of temper on the first furious attack that was to be made upon me by the blustering hero, whom I expected every moment. His arrival was soon announced to me, in a formal challenge. I am free to own, that the message coming as it did
from

from an own and only brother,—a brother whom I had reingratiated into the favour of the best of mothers,—a brother whom I had recently restored to the lost affections of his father,—a brother to whom my heart-strings and purse-strings had been always open ; I am free, I say, to confess, that such a message coming from such a brother, shocked me on its first impression.——But I presently saw through the drift of it, and therefore, with much coolness of temper, sent him an answer, couched in the following words, namely, “ That if he was wicked enough to wish to fight himself into a very good estate by my death, I was not weak enough to fight myself out of one, merely to oblige him.” This answer cooled my young gentleman’s courage for the present ; and, a few days afterwards, a circumstance occurred, which gave him an opportunity again to signalize his prowess, and unabated, undiminished thirst after my blood :—I was distraining some of the tenant’s cattle opposite to

my father's house, in order for the payment of their rents, when this prize-fighting hero, attended by my father and a very great number of men, which they had collected, but none of which would obey either their orders, or their threats, made a daring attempt to rescue the cattle from me, in which, indeed, they did not succeed, otherwise than by laying violent hold of the reins of my bridle, with intent, as my foot was entangled in the stirrup, that I might have a fall, and be dragged along the ground at the mercy of my horse, which they were unmercifully whipping and flogging all the while.

These, and a hundred such *pleasing* frolics, Mr. Charles Lionel Fitzgerald exhibited, during his stay in the country : At length, having done damage and execution enough, and finding himself disappointed in some advantageous views he had upon my father, and quarrelling with him in consequence of that disappointment,

pointment, he suddenly disappeared; and my mother having heard of the outrages he had committed against me and my property, he flew over to England to beg Lady Mary would intercede with me for his pardon and forgiveness, which I agreed to, on his acknowledging the violence and illegality of his conduct, and promising never to be guilty of the like again.——

Thus, once more, all was peace and harmony between us; and to satisfy and confirm it the better, I invited him and his wife to Rockfield-lodge. My house, my carriage; my horses, and my servants, were all entirely at their service and devotion. One would have thought, so much attention on my part to please him, would have cemented the brotherly affection between us. Quite the contrary; I had fulfilled the scripture in the literal sense of the phrase,—I had not only forgiven his offences against me and my property seven times, but I may truly add, that I had forgiven him seventy

times seven. He still wanted to try my patience and forgiving temper a little farther, than even the scripture requires at our hands. Accordingly he, in all appearance, took an amicable leave of me, and set out for Dublin. In some short time he returned into the country, just alighted at my door, and in a peremptory tone demanded a hundred guineas of me, which, he pretended, I owed him. I invited him to take a bed at my house, but his answer was, he did not come upon any such errand,—what he wanted was a hundred guineas; and if I did not instantly pay him, he had made an affidavit of the debt, and I should be immediately arrested for it. As I was conscious to myself I did not owe him one single farthing, I was at a loss to account for this extraordinary manner of his proceeding. It appeared to me at first, that his brains must certainly be turned. But upon second thoughts, I clearly perceived that his sole intention

was

was to pick a quarrel with me. In which opinion I was more strongly confirmed, by his re-mounting his horse, and instantly taking French leave of me. But understanding afterwards, by his attorney, who, I am informed, was near at hand, that he could not recover this pretended debt of me, unless he could prove that he had made a previous demand of it by some other person than himself, for he could not be a witness for himself in his own cause; he instantly directed his course to a neighbouring clergyman's, the Rev. Mr. John Burton, a gentleman for whom I have a particular esteem and regard, requesting him, that he in person would make the demand upon me for a hundred guineas, in the name, and for the use, of Mr. Charles Lionel Fitzgerald, alledging, that he had not the least doubt but I should readily pay it on Mr. Burton's friendly interposition and intercession. Mr. Burton, with great goodness of heart, delivered this message to me, not knowing that

that Mr. Charles Lionel Fitzgerald had been with me before, on the same errand. I told Mr. Burton all the circumstances I have related above, who was surprized, as well at the nature of the demand, as at the manner in which it had been demanded, and agreed with me, that the whole plan and design was either to pick a German quarrel with me, or to try if he could intimidate me into the payment of the money, which he might be in pressing wants of, for the purpose of extricating himself from some imminent and impending ruin, into which his unbounded extravagance and heedlessness of character might possibly have plunged him. Both these conjectures were well-founded. For it seems he had been arrested in Dublin, and that he either made his escape from, or was permitted by the sheriff's officer to come down to my house to prevail on me to pay the debt, or be surety for him. But besides this embarrassment, which he might probably have gotten the better of, there lay other pressing

sing

sing and far louder calls upon him, which could not fail to lie heavy upon his heart, and torture his conscience. For, having accidentally fallen into my hand, a very large bundle of letters, containing a choice correspondence between him, his father, and his grandfather-in-law, Mr. Dean Bailey; I found, upon looking them over, that Mr. Charles Lionel Fitzgerald and my father, together with the assistance and ingenuity of a Mr. or Captain DONELLAN, who, it seems, can counterfeit any hand, so that it shall not be discovered, had been concerned in fabricating and negotiating bills and draughts with the borrowed indorsement of Mr. C--k-r's name, and that one of these draughts were actually due.

I very well knew this curious junto of correspondents (Mr. C--k-r excepted, who is a respectable tradesman) are capable of denying the truth of this assertion, were it not for the identical letters in their own hand-writing, three of which, as vouchers
for

for my not dealing in falsehood or fiction, I think it necessary to lay before the public.

As to these written by Dean Bailey, and that in particular which he wrote by way of an original for his grandson-in-law, Mr. Charles Lionel Fitzgerald, to copy and to send to my mother; the sole purport of which was to inflame and exasperate her Ladyship against me, and clandestinely to rob her of her best affections; I shall, out of respect to his cloth, suppress it for the present; but I caution him for the future, not to act the character of an incendiary and *boute-au-feu* any more, lest my just resentment shall get the better of my discretion and more sober judgment,

*Si me commorit, melius non tangere clamo;
Flebit & insignis totâ cantabitur urbe.*

As to the letters which passed between my father and his son Charles Lionel Fitzgerald, they exhibit a too lively picture

ture of the agonies the former must have felt, on receiving the immediately following letter from his son Charles Lionel.

L E T T E R I.

MY DEAR FATHER,

I FEAR much *we shall be ruined*.—As yet nothing is done by Mr. DONEL-
LAN,—and the bill I passed is DUE,—
and they must have their money.—I have
a curious paper to shew you from the
country,—believe me.

Yours,
C. L. F.

L E T T E R II.

T H E A N S W E R.

MY DEAREST CHARLES,

I WAITED all day and yesterday
at the CAPTAIN's,—he sent out a draft
of

of sixty to get you forty.—I have not slept all night, and am very unwell, or would go to DONELLAN'S.—If you go, I am confident he will DO IT for you, or give you the draft.—I shall also send to him.—*I am monstrously distressed about you and the BILL.*—Call on DONELLAN, my dear Charles.

I am sincerely yours,

GEORGE FITZGERALD.

L E T T E R III.

SECOND LETTER FROM MR. GEORGE FITZGERALD.

DEAR CHARLES,

I CALLED at the FLANNING-SHOP; after some chat with *her*, she told me her son was out looking for money, and that she expected to be prepared for tomorrow, according to promise.—She asked me, *how you came to be the Drawer of*
of

of the draft, and Mr. C—K—R the Indorser, and yet you have the draft.

I told her the draft was passed to me by C—k—r, and that in order to convenience you, as you was lately disappointed in a bond-debt of £800, I wished to see her *bill paid*.—You cannot expect to hear more this day from US.—I have never sat down since I saw you.
I am,

Dearest Charles,

Your most affectionate Father;

GEORGE FITZGERALD.

It is now past five.—I hope you will like what I have done.

LETTER IV.

FROM THE SAME.

MY DEAREST CHARLES,

I WISH I could be with you this day, but it is not in my power. I am
grieved

grieved to the heart for you ; but I trust in God all will be soon over,—I am confident it will.

GEORGE FITZGERALD.

LETTER V.

FROM THE SAME.

MY DEAREST CHARLES,

MY petition is before the Chancellor, and he has promised to read the affidavits over this day. I am sure of success. I have been so employed about your affair, that I had not time to go to Secretary this day. The DEAN and you ought to go there on Sunday. I must see you before you go,—that I may give you your *lesson*.

I send you the account of the *last transaction*. You will see how the money was laid out.

GEORGE FITZGERALD.

This

This last tranfaction refers to a very curious bill of exchange, in which Mr. Percey M-----'s name is inserted, who, at that time, was gone to the West Indies; and it is also indorsed by Mr. C--k-r, who, upon being interrogated by me concerning such his indorsement, positively disowned having any knowledge of that negociation.

I shall trouble the public with no more of this choice collection of letters: the specimens already given are a sufficient testimony of the dreadful horrors of a guilty conscience, which were too visibly depicted in every feature, gesture, speech, and action of Mr. Charles Lionel Fitzgerald, when he came last to Rockfield, as I have above related, and as the Reverend Mr. Benson had judiciously conjectured.

It might be expected, perhaps, that, in this place, I should adduce some well-attested facts, in proof that Mr. Charles

D

Lionel

Lionel Fitzgerald came also to my place of residence, with the atrocious intent of compelling me, by his brutal and outrageous behaviour, to have recourse to bloodshed on one side or other ; but such vouchers would, I apprehend, be rather premature, as a multiplicity of instances of this kind will be necessarily introduced in another part of this publication.—— Besides, the principal, if not the sole business in this stage of my appeal, was, to prove, as I trust, I have impartially and incontrovertibly done, that I neither was, nor possibly could be, the primary and sole cause of ALL these quarrels, which are here described in their genuine colours, and which still continue to disunite, distract, and disgrace a discordant family : but that, on the contrary, in such of them as I have taken an active part, I have either effected a reconciliation, or done my utmost towards a family re-union, and if I have not always succeeded, I have, at least, always acted
to

to the best of my judgment, and circumscribed abilities.

Proceed we then to the *second* charge, by which I am accused of having imprisoned my father in my own house at Rockfield, for several months together, without any justifiable cause whatever. And farther (as I had an interest and advantage in his death, by obtaining the immediate possession of a very considerable estate and land-property) that my father had been made away with, and deprived of his existence, by taking away his life at my instance, and by my directions, as my accuser, Mr. Charles Lionel Fitzgerald, on the holy Evangelists, plumply swears and VERILY believes.

This charge I have extracted from the affidavit he made before the justice of peace who granted the warrant to apprehend me, for so flagrant and heinous

a breach of the peace : every word of which is an absolute falshood and villainous lye, and which the justice might easily have informed himself of, had he but dispatched a messenger to Rockfield-lodge, which is only three miles distant from his own residence, previously, and as an act of good neighbourhood, he most doubtless ought to have done.

The charge itself may be divided into two parts : *first*, that I had unjustifiably imprisoned my father : *secondly*, that as I had an interest and advantage in having him murdered, he had actually been murdered, at my instanae, and by my directions.

I shall observe the same method in refuting *this*, as I have done in the preceding charge, by giving each of the branches a separate, distinct answer.

With respect to the *first* branch, I apprehend, and that too upon no less an
 autho-

authority than of that quantum lumen of the law, the late Lord High Chancellor Hardwich, that certain situations in a family may occur, in which it is both prudent and advisable for some near relation or other, to restrain even the HEAD of such family of his personal liberty, without the usual formalities of any legal process.

The case I allude to, is, that of the present Earl of Harborough, and his honourable brother, Lieutenant-General Sherard, who had sued out a commission of lunacy against their brother and their head of the family, the Earl of Harborough. I happened to be in court on this particular occasion, and therefore can speak to it with much precision and perspicuity. Ten or twelve witnesses of most unquestionable credibility having been examined, unanimously deposed to an amazing number of acts of insanity committed by the noble peer, from his adolescence to the very day of

the trial : the chancellor, after making a short apology to the witnesses in general, told the court, that by the nature of his office, his judgment must be governed by no other evidence or testimony than what proceeded from the noble peer's own lips.-----Accordingly he proposed three questions to the noble earl. The first was, Whether he could count twenty :—the second, Whether he knew in what county he lived :—and the third, Whether he was a bachelor, widower, or married man ? To each of these questions a satisfactory answer having been given by his lordship to the propounder, the lord chancellor passed sentence in words to the following effect, namely,—

“ That the laws of the land did not authorize him to give a decree in favour
 “ of the application for perfecting the
 “ commission, and that it therefore must
 “ be superseded ; nevertheless, as it had
 “ been incontestibly proven to the court,
 “ that, in point of *sound* judgment, the
 “ noble peer was weak to an extraordinary
 “ nary

“ nary degree, that he was totally bereft
 “ of common discretion in the most ordi-
 “ nary occurrences of life, the chancellor
 “ added, that, for the dignity, honour,
 “ and credit of the noble family, he
 “ would advise and strongly recommend,
 “ that the noble peer, for the future,
 “ be not entrusted to the unlimited go-
 “ vernment of himself, nor to the unre-
 “ stricted pilotage of his own affairs ; but,
 “ on the contrary, both the one and the
 “ other be immediately taken under the
 “ care, aid, tuition, and protection of
 “ some near relation.”

This precedent is clearly a case in
 point, and would fully justify my con-
 duct, I apprehend, had I really restrain-
 ed my father of his liberty, which, in
 the sequel of this publication, will be as
 clearly shewn that I did not. This ad-
 judication of the chancellor was founded
 upon the humane principle of keeping all
 family-indiscretions from the public eye
 as much as possible ; and we owe to his

lordship's goodness of heart, and critically distinguishing faculties, a more free and much correcter line, than ever had been drawn before, between a *domestic* and a *legal* restraint of a man's liberty. For as there are several species of insanity, so likewise are there several degrees.—

When the degree becomes dangerous to a whole people at large, then indeed the party insane is, and ought to be, subjected to the guardianship and controul of our public jurisprudence : but where it is not so extensively virulent, and where it may be noxious to the welfare, peace, and quiet of a private family only, there the object, acting in a narrower circle, certainly is fitter for the private interposition and constant oversight of some near relation, than to be put under the more notorious and more rigid custody of our courts of law.

To shew, then, to how great an extent this precedent applies to my unhappy father, I will simplify his case by remarking,

marking, that the seat of the insanity or depravity under which he labours, lies not in the brain, but in the heart,—a distinction differing only in the sound of words, but not in effect; for it hath been equally ruinous to himself, equally baneful to his family, and consequently, in point of *substantial justice*, which is the end of all law and equity, hath rendered him equally unqualified in the eye of the law, to be considered as a person altogether *sui juris*. That I speak out of pity and compassion, and not with any ill-will or malevolence of heart, the following detail of facts will demonstrate and evince.

There lies this moment upon my table before me a catalogue of fifty-five suits in Chancery, which my father, during these last thirty years of his life, hath had with his nearest kindred in blood, the gentlemen of his neighbourhood, his tenantry, and tradesmen. The various suits he hath gone through, in the Ecclesiastical

statistical and Common-law Courts, will triplicate, if not quadruplicate the number of those in Chancery. Never did I hear, nor can I recollect of my own knowledge, that in this long list of law-suits, he ever came off victorious, excepting in one solitary instance, which was between him and a Mr. Coen, one of his tenants, and which ended in the ruin and voluntarily exile of the poor man. Having thus run the gauntlet, as it were, one should have thought, that a warfare of so long continuation, so ruinously expensive in its prosecution, and so singularly uncommon in the event, might have sickened any man of the least forethought or foresight, especially at his time of life, from ever embarking again in fresh litigations. For if he hath found by fatal experience, which, in many instances, hath been known to make even fools wise, that he was so opprobriously defeated in these kind of contests, when his health, his intellects, and his fortune were unimpaired, what better success can

now

now propose to himself, when his constitution, his understanding, and estate, are so rotten, shattered, and impoverished.

It is not one instance, particularly in this species of insanity, can justly denominate and ascertain a man to be insane : it requires, as it were, a cloud of witnesses to rise up in evidence against him. For which reason, painful as it is to me, I lay before the public the following testimonies in justification of my conduct, had I even taken the part which my accuser so falsely lays to my charge.

About three years ago, I was violently afflicted with a disorder that can hardly be mentioned with decency in print,—it was the Hamorrhoides : my surgeons saw no relief for me but the knife : I was actually under the operation, when my father came knocking at my street-door ; the servants let him in ; up he rushed to the chamber-door, when, at that

that instant, I lay in all the agonies and excruciating tortures of an incision. One of my servants informed him of my situation, and intreated him not to burst into my room at that moment. My father insisted upon it, and kept thundering with a great oaken stick against my chamber-door. The surgeon was alarmed, went to him, intreated him to go down for a few minutes, since it would certainly endanger my life, if I was at that moment any ways disturbed. What was my father's answer :---Oath after oath took place; and at last he condescended to go down stairs, but not without first banging each side of the waincoat with his oaken stick, to make as loud a noise as he possibly could. In vain the servants attempted to prevail upon him to sit down in the parlour, till such time as my surgeons thought it safe for me to see him. No; he came for money,—money he would have, and if he could not instantly have it of me, he would go to his other villain of a son,

and

and have it there;--damning me and the faculty that attended me, in one breath : out he steps at the street-door, and there sat himself down upon the steps, cursing, swearing, and raving out that I was wallowing in riches, and that I would not give him, a poor, aged parent, actually famishing with hunger, a single guinea, nor even so much as a morsel of bread, or one glass of wine. A mob, from one end of the street to the other, was in an instant assembled, my father in the centre of them, with the bitterest curses kept exclaiming against me. Then falling upon his knees, he intreated them to aid and assist him in pulling down the house about my ears, and bury me in its ruins, adding, that I had justly merited it both of him, and at the hand of God, for my undutifulness and black ingratitude to the best of fathers. Providentially, a worthy ecclesiastic, who then lived opposite to me in Merriion-street, alarmed on seeing such a crowd and press of people, who now seemed

seemed ripe for any instantaneous act of outrage, and observing my father still vociferously harranguing in the midst of them, threw up the sash of his window, and by a judicious well-timed and well-directed eloquence, assured them he knew me not to be the bad-hearted son I had been represented to them, and that they might plainly see my father had lost his senses, and was then in a raging fit of madness. Thus by the primarily apparent hand of Providence, and instrumentally by the kind interposition of a friendly neighbour, I was saved, thanks be to Heaven, from the most imminent, and otherwise inevitable, destruction.

Men of a certain age, who publicly speak their mind without reserve, lay themselves open, and the world can as easily form a judgment of the sanity or insanity of their hearts, from the principles they avow, as from the most conspicuous and flagrant actions of their lives.

lives. In proof of this assumption, the following little anecdotes are adduced.

I had introduced my father to a neighbouring gentleman of rank, character, and fortune. We were upon a friendly visit at his house for two or three days: every possible mark of observance and respect was paid to him, purely, as I have since understood from that gentleman himself, out of a regard to me. On our second day's visit, the conversation after dinner turned upon the scandalous practice of some persons in the country, calling themselves gentlemen, lending out their money at seven and eight per cent. My father took up the discourse, and, considering the universal depravity of mankind, said, he saw no scandal at all in the practice, and that, for his part, he thanked his Maker, that in a few days his son (meaning me) was to pay him three thousand pounds sterling, and the world should then see whether he should be so weak a man indeed, as to content himself

himself with eight, or even eighty per cent, for he knew, of a certainty, he could get more, and he should indubitably do it without the least scruple of conscience. It was what he had a retaliative right to; mankind had plundered him, and he would now, in return, plunder every man, with whom he should have any dealings or transactions. He did not like bond-security, he said, even tho' three good men joined in the obligation, and agreed to give him any interest he should demand and previously insist upon; one of the bondsmen might perhaps blab out more than he should: a mortgage, a virgin-mortgage upon a good estate, was the object he had in his eye.—In that case, and that alone, he would *at first* lend out his money at legal interest: but he should take care that a *borrowing-clause* (as he called it) should be inserted in the mortgage-deed, and then he would by little and little feed, and feed, and feed the mortgagor with money, till he had eaten

eaten into his very vitals, and spread himself, like a cancer, over the whole estate, and so get it for the tenth part of its real value.

If this declaration was shocking to Sir Malby Crofton and his lady, at whose house we were,—if it thunderstruck the two Miss Croftons, and Mr. and Mrs. Kelly, who were present at the same time, what must have been the feelings of a son, who had introduced such a monster of a father, under the roof of so respectable a family. A monster, I mean, if it could be supposed he was then in his right senses; but I have given this private anecdote, in confirmation of his insanity, and as the best, if not the only, apology I can make for him to the public.

It is with the same compassionate view, I mention another declaration, worse, if possible, than the preceding one, which he likewise publicly made at another

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gentleman's table in the same neighbourhood. One of the company took the opportunity to ask him, which of the whole catalogue of crimes was, in his opinion and judgment, the most dangerous to society, and in itself the most unpardonable? His answer was, Certainly that of perjury : and he gave for reason, that he believed it was the only crime he had not been guilty of ; adding, that he had a hundred and a hundred times gone as near the wind as any man living or dead, but that he had always taken care to secure some æquivoque in his favour, or some little hole to creep out at, should the special matter ever be brought to issue, and no consideration, he was sure, *one alone excepted*, should, or ever could, tempt him to be guilty of it.

I will trouble the public, only with two more anecdotes of this kind.

The

The first is a matter of public notoriety, and was originally ushered into the world at Daly's Coffee-House, in Dublin :-----Old Mr. Fitzgerald (for in these paroxysms of insanity, I can no longer call him my father,) hearing there had been a slight rencounter between myself and Mr. English, member in the present parliament, openly declared in this Coffee-House, that he would give the gentleman the reversion of one moiety of his estate, on condition he would contrive to make a German quarrel with his two sons, and send them both out of the world.-----Mr. English happening soon after to come into the Coffee-House, was accosted by old Mr. Fitzgerald to the like purport and effect, which, as it was a most infamous proposition, Mr. English treated him as a madman, though not without some marks of contempt, indignation, and resentment.

The other anecdote is of a private nature:

When the old gentleman lodged in Fleet-street, I sometimes visited him there, I was generally seated in one particular place in the room, no great distance from the door. The old gentleman had marked this place as a proper spot for the execution of a design against my life, which he had a long time premeditated.-----Accordingly he called to him a Mulatto young man, then in his service, and making him a present of a tambour-waistcoat, told him, it was now in his power to give a signal proof of his fidelity and attachment. The Mulatto asked, in what manner that could be done. The old gentleman then frankly told him, that when I should visit him the next time, the Mulatto's business was to take a Turkish sabre, which he put in his hand, and instantly, on my sitting down
in

in the accustomed place, he should cleave my skull in two. Adding, there would be no danger of any discovery of this excellent plot, for that he would himself immediately fire a pistol into the wall, throw both the pistols on the ground, run out into the open street, call out murder, and swear that his son George Robert Fitzgerald had fired at him one pistol, and as his son was going to fire the second, his servant, the Mulatto, had providentially prevented it, by a dreadful blow with a Turkish sabre, which accidentally happened to be in the lodgings at that fortunate instant of time.

Having selected these few out of an almost incredible collection of instances of the dreadful insanity of his heart and head, in superaddition to the affidavits made by other persons, and self-convicting letters written by himself, and already inserted in this publication, it

would be needless to subjoin any more at present, since these have been adduced for no other reason than to prove, that if I really had restrained my father of his liberty, as my accuser falsely and perjuriously charges me to have done, my conduct even then would have been justifiable both before God and man, and that I should have deserved the thanks of the public, or at least of my own family, rather than have justly incurred the punishment of the laws, or the censure of individuals.

It, perhaps, may not be sufficient to have shewn, that if I had imprisoned my father in my own house, there existed a justifiable cause for my having so done, proof positive will be required of me, that the world may be irrefragably convinced, my father really and *bonà fide* was not imprisoned at all.

I foresee, that as my father most certainly had been under my roof for four
or

or five months together, and as certainly there had been many desperate attacks made by him against my life and property, previous to his coming to reside with me at Rockfield-lodge, it will be expected of me, that I give a very clear and satisfactory account to the public, how it came to pass, that after so many unparalelled scenes of such unnatural outrages on the part of my father, I could even think of suffering him to come within my doors, unless it had been for the special purpose of imprisoning his person there, when once I should have gotten him within my custody and power. The public, I allow, have an undoubted right to call upon me for an eclaircissement of my motives and conduct in so doing ; and I should stand condemned in my own conscience, were I, in the least, to prevaricate with them, or to attempt giving them an answer, that could by any possible means misguide their conceptions, or any way mislead their judgment a-

stray. Nothing but the clearest truths, stated in the clearest language, and supported by the clearest facts, shall find admission into the plain, simple narrative, I am now going to lay before them.— I must observe however before-hand, that for the sake of perspicuity, I shall be obliged to introduce some prefatory matter, which, though it may seem *prima facie* not necessarily connected with the subject, yet in point of elucidation may be considered as the first link of a chain, which very chain would be incomplete, or at least not perfect, without it.

To begin then, I must acquaint the public, I had understood from various quarters, that my father had made most grievous complaints, wherever he went, that he was actually reduced to poverty, and even to a state of beggary.—A *state of beggary*, I say, because on one of his applications to me for more cash than possibly at that time I could spare, he

he flew into a violent passion, and threatened me, that if I did not supply him with the money he stood in need of, he would positively go to church the first Sunday Dean B--l-y should preach a charity-sermon,—that he would stand like a beggar at the door, with a pewter-bason in his hand; and actually crave charity of every person that should pass by him. Knowing him capable of carrying his threats into execution, and always intending in my own breast (as I still do) that never shall he know the want of a decent provision for himself, (I do not say for his mistress too) so long as I have the abilities to assist him, I voluntarily made him a present of a snug, comfortable lodge in the country, with fifty acres of excellent land adjoining to it: this very pleasant farm,—this sweet retreat, lies in the parish of Turlow, a place frequently mentioned in this publication, and not farther distant from my own house than four or five hundred yards. My heart told me, I had done a dutiful,

dutiful, affectionate, and truly generous act. Little, alas! did I foresee the consequences, or that I soon should have reason to lament with the poet.

*Mantua (væ miserum!) NIMIUM VICINA
Cremonæ!*

If I were so blind to future contingencies, my lawyers were not. They told me, that with the best intentions in the world, I had done the very worst act I ever had done in my life. The grant I had made, they foresaw and foretold, would be a perpetual thorn in my side. The event soon proved their prediction but too true.—For my father, soon afterwards, coming into the country, under pretence of taking possession of his little farm, found the house untenanted, and the doors consequently locked; what does he do on this occasion? Why, without sending to my house for the keys, immediately he posted back to Dublin, made an affidavit, that I had, in the most daring

daring and outrageous manner, deforced and disseized him of the premises ; and, under colour of this forceable disseision, he obtains a Writ of Entry, directed to the sheriff, commanding him to give my father immediate entry into the lands in question. Fortified with this artillery, my father dispatches the writ to the sheriff, who, in discharge of his duty, came to Turlow, where not a living soul was seen, nor had any one in the neighbourhood ever dreamed of making the least resistance, and possession was given. When after staying there a short time, my father returned to Dublin. On his return a second time to Turlow, he found the same doors locked against him; and well they might; for he had locked them himself, as he really had done before, and actually had the keys in his own pocket.——This second pretended dispossession, however, furnished him again with a pretence for sending to the sheriff, who very obligingly came down, and gave him possession, with the same facility

facility as before. This easy possession, and this obliging civility of the sheriff's coming unattended, was not what my father wanted; it was the *posse comitatus* he and Mr. Charles Fitzgerald were feebly endeavouring to bring to Turlow, but had not yet been able cleverly to bring their crude scheme to bear.—— Frustrated in their second attempt, they stayed a few days in the country, then returned to Dublin; and in about a fortnight or three weeks, came down a third time, and the same game, on the like frivolous pretext, was played over again by my father, with this difference, that in his letter to the sheriff, he now, in most glaring colours, represented the whole neighbourhood where I resided, all up in arms, and not only ready, but determined, to resist and oppose, to the last drop of their blood, the execution of any writ, or any body of men, were they ever so numerous. Upon this previous communication of circumstances, my father peremptorily insisted that the
posse

posse comitatus should attend the sheriff, otherwise, he alledged, it would be impossible for possession to be given him.

The sheriff, Mr. Ormsby, a gentleman of a most enlightened understanding, and of the greatest respectability in the county, having already several times been witness to the Quixotism and wild romantic delusions of my father's overheated brain, gave little attention to the exaggerated account; he concluded the whole was only a third voluntary misrepresentation of facts; in which he was soon convinced, on receiving a letter from me, assuring him all was calm, as usual, in the country, and that there was not the least appearance, or the most distant intention, of obstructing the execution of any order from the Lord Chancellor or courts of judicature. On this assurance, though he foresaw his attendance would be intirely unnecessary, yet he came down, in person, to Turlow, but attended only by a single servant in livery,

livery, and put my father again into the very peaceable possession of his house and farm, without any hindrance, let, or molestation whatever.

The reader will easily judge of the magnitude of disappointment, by the affidavits afterwards made by Mr. Charles Lionel Fitzgerald, charging the sheriff with neglect and breach of duty, in not bringing the whole power of the country to give possession on this last application to him.

I should here finish this little introductory anecdote, but as my father and Mr. Charles Fitzgerald, for these last two months, have scandalously spread a report in Dublin, that the sheriff did not dare to refute the affidavits they had made against him, that he never had applied to the sheriff to raise the *posse comitatus*, and that I never had or would give him possession of his house and farm, I think it a debt of justice I owe, both
to

to Mr. Ormsby's character and my own, to insert in this place, though a little out of order, in point of time, two letters which have lately passed between me and that gentleman, in refutation of so groundless an aspersiön.

TO THOMAS ORMSBY, Esq.

DEAR SIR,

TO clear a much injured character will, I am convinced, be a sufficient apology to a gentleman of your humane and just feelings, for giving you this trouble.

I beg to know, Whether, in any instance during your sheriffalty, I ever gave you any the least obstruction in executing any orders of the Chancellor, or from any other of the courts of judicature?

Whether

Whether my father did not apply to you, to raise the *posse comitatus*, to give him possession of his house ?

Whether you did not think it unnecessary to do it, well-knowing you would not meet with the least obstruction ?

Did you give possession ; and if so, was there any obstruction on my part ?

I have the honour to be,

Dear Sir,

Your most obedient

humble servant,

GEO. ROB. FITZGERALD.

To GEO. ROB. FITZGERALD, Esq.

S I R,

DURING my sheriffalty I did not receive the least obstruction from you,
in

in executing any orders from the Lord Chancellor, or courts of judicature.

Your father did apply to me to raise the *posse* of the county of Mayo, in order to give him possession of his house of Turlow, which I refused to do, until I met with opposition, having received a letter from you to inform me, that any person I sent to Turlow should meet with the proper respect, and that I need not give myself the trouble of going there, as you did not mean to give your father, or the courts, any opposition.

I gave your father possession of said house, and did not meet with the least opposition from you, or any other persons.

There were *affidavits* made against me, which I contradicted.

I shall not say any more at present, but that you need not have apologized

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in the least for requesting answers to the questions you put to me.

I am, Sir,
Your most obedient and
very humble servant,

THOMAS ORMSBY.

BALLINAMORE, 5th Nov. 1781.

Thus stood my life or character perpetually exposed to some fresh attack or other; one while would they make their approaches by sap; another, by storm, till at length, finding they gained little or no ground upon me, my father having quarrelled with Mr. Charles Fitzgerald, began to think of proposing terms of peace and reconciliation, upon the condition, that I would give him three thousand pounds for his reversionary interest in the estate. Mr. John Fitzgerald, a very trusty and most faithful dependent of my father's, brought me the proposal. My
answer

answer was, that I was afraid to enter into any connections with my father.

-----*Timeo Danaos, et Dona ferentes.*

The fatal consequences of the grant I had made to him of Turlow, had taught me experience : I could not be too much upon my guard. If I entered into the treaty with him for the purchase of his reversion, I could not, in common prudence, trust myself with him in any third place, and should he come to my house to transact this business, which unavoidably would be a work of time, might he not publish it to the world, that I had trepanned him there, to get him arrested and throw him into a common gaol for life, or at least to confine him as a prisoner in my own house. I knew him equal to these, or any declarations, which, at a future day, might serve some momentary purpose.---In short, I declined all kind of treaties with him. He had foreseen that I would do so, and

accordingly had given it in special charge to Mr. John Fitzgerald, not to quit me one moment, upon any account whatever, until he had brought me to accede to a personal interview with him, wherever and whenever I should be pleased to nominate and appoint. On these submissions, which I felt were too humiliating for a parent to make, at least, without the desired effect, I consented that he might come to reside at my house, till the proper conveyances should be well-settled by the most eminent council in the kingdom; in the mean time, I gave orders, that he should be treated in every respect, not only as my father, but even as the very master of my house. However, before I could bring myself to this resolution, I made Mr. John Fitzgerald give me his sacred word and promise, that in case my father should, to my prejudice or disadvantage, ever make an ill-use of the consent I had thus given, for his coming to live under the same roof with me, that then he (Mr. John Fitzgerald

rald) would justify to the world the part I have acted in the negociation and treaty, either by parole or written evidence, or by public affidavit. I am glad indeed I took this precaution, and it equally gives me pleasure to find that Mr. John Fitzgerald, though from his infancy invariably attached to my father, did, on the first requisition made to him, fulfil his promise in the clearest and most unequivocal manner, by an affidavit, which presently will make its appearance here.

In consequence of the foregoing interlocutory treaty, my father came to my house, where every respect and attention was paid him: and to convince him how ready and willing I was to set the business *en train*, I desired he would nominate some gentleman of the law in the neighbourhood, to come over and draw articles of agreement between us. My father pitched upon Mr. Christopher Bowen; I could possibly have no objection,

tion.----Pen, ink, and paper, were at hand, and the following letter written by my father, and signed by us both, was sent-off express, directed

To CHRISTOPHER BOWEN, Esq.

S I R,

AS we wish to accommodate matters so as to put an end to any farther alteration or suit, we hope you will come here as soon as possible, to draw our agreement, for which Mr. George Robert Fitzgerald will see you. You will much oblige,

Sir,

Your most obedient

humble servants,

GEORGE FITZGERALD.

GEO. ROB. FITZGERALD.

Rockfield, April 4th, 1787.

I shall

I shall make no other commentary at present on the two preceding vouchers, save that by the embassy or mission of Mr. John Fitzgerald to me, it will, I trust, most incontestibly appear to my judges, that the imprisonment of my father in my house so falsely laid to my charge, was really and *bonâ fide* no other than a visit to me upon a business very important and advantageous to him,—that the visit itself was at his particular request and most pressing instance, and that I did not give the least encouragement to it, until I had taken every possible precaution within the narrow and deceptive scale of all human foresight and prevention.-----From the second voucher, it will likewise appear, that when my father paid me this visit, I did not trifle away his time, by amusing him with any foreign matter, but that we went instantly to work, and made as early and as efficient a beginning upon the business in question, as the circum-

stance of the distance between us and a counsellor of avowed abilities and reputation, would in the country admit of, not unmindful of the old adage :

Dimidium facti, qui benè cæpit, habet.

From the vouchers immediately following, it will also appear, that the good work of peace and reconciliation thus happily begun, was going on with all the *festina lente* of the law, and that it was actually so far advanced, that, at the time Mr. C. L. Fitzgerald served the warrant upon me, that my father, not only had acknowledged, but repeatedly declared, to many gentlemen of unexceptionable respectability for their impartiality, integrity, and veracity, that the consideration-money for his reversion, would be paid him in a few days, and that he was not in the least restrained of his liberty ; but, on the contrary, he was a free man to all intent and purposes,

poses, in the most unlimited meaning of the word "FREEDOM."

The *first* voucher is the following note, from the Right Honourable Owen Wynne, senior Governor of the County of Sligo, and one of the Representatives in Parliament for the Borough of Sligo.

VOUCHER THE FIRST.

"MR. WYNNE's compliments to Mr.
 "George Robert Fitzgerald,—he assured him, he ordered a person on the day
 "before yesterday to wait on him, and to
 "inform him of the conversation which
 "passed between old Mr. Fitzgerald and
 "Mr. Wynne, at Haslewood, and the
 "substance or purport of the letter,—Mr.
 "Wynne asked him, if he was then under any restraint, or afraid of any person whatsoever; that if he was, he
 "had better inform him, as he was commanded by his Excellency the Lord
 "Lieut-

" Lieutenant, to set him at liberty. Mr.
 " Fitzgerald's answer was, that he was
 " as much at his liberty as ever he was,—
 " that he was then on his way to Dub-
 " lin, where he was going to take ad-
 " vice, as his health was very bad. Mr.
 " Wynne asked him then, if his son,
 " young Mr. Fitzgerald, laid him under
 " any restraint, or whether he was in
 " any apprehensions of his confining
 " him. His answer was, that he was
 " not under the least degree of restraint
 " from young Mr. Fitzgerald, nor any
 " other person in the world.—He was
 " then preparing to take his leave of Mr.
 " Wynne, who thought it prudent to
 " detain him a little longer, until he
 " could have some witness to the conver-
 " sation; on which Mr. Wynne called
 " Mr. Gillmor to be present, when the
 " old gentlemen repeated a second time
 " what Mr. Wynne has related. There
 " was also present a lad, one of Mr.
 " Wynne's sons, who is in the college.
 " It then occurred to Mr. Wynne, that
 " it

“ it would be right for him to give un-
 “ der his hand, that he was perfectly
 “ free, and at liberty, and under no re-
 “ straint ; and he brought him pen, ink,
 “ and paper, on which he wrote what
 “ Mr. Wynne hath set down, and no
 “ more, and then handed the paper back
 “ to Mr. Wynne, who observed, that he
 “ had not mentioned his son : on which
 “ Mr. Wynne gave him back the paper,
 “ on which he wrote, *I am under no re-*
 “ *straint, I mean, from my son.*

“ Mr. Fitzgerald then went off with
 “ Sir Malby Crofton ; and Mr. Wynne
 “ sent the letter that night to Mr. Eden,
 “ and hath not seen it since, nor did he
 “ keep any copy of it.

“ Mr. Fitzgerald seemed very unhap-
 “ py at his son's having incurred the
 “ displeasure of government ; and said,
 “ he would do any thing in his power
 “ to obtain pardon for him, or give any
 “ security

“ security that could be demanded in
“ reason.

“ Thus Mr. Wynne hath told Mr.
“ George Robert Fitzgerald every syllable
“ that passed, as nearly as he can
“ possibly recollect.”

SLIGO,

1782.

VOUCHER THE SECOND.

MAJOR ORAM saw George Fitzgerald, the father, first at the house of Mr. Dan. Fallon, at Killala; he told him, he and his son Robert would go immediately to Dublin, that all affairs would be amicably settled between them, and that was the place for his son to take his trial, for that he got no *fair play*, nor could expect none, in this country.

The next time the Major saw him, was at John Joint's, when he asked
the

the Major, if the Mayo legion were not then at Ballina,—said, he heard they intended coming to Killala, with Mr. Cuff and his Volunteers; that if they did come, he would go out as a magistrate of the county, and order them to disperse,—that if the mob (meaning the Volunteers) did not obey him, he would defend himself,—that he knew of no business they had with him, or any demands they had on him, except to take him from his son, whom he was determined to stick by, and whose safety depended on his being with him;—that he had that morning sent to Mr. Knox, to let him know, and that he might report to the world he was no prisoner, that he was free, and staid with his son from choice. In the evening of that day, he repeated nearly what he said in the morning, and then run out into bitter invectives against his son C. L. Fitzgerald, abused him to all intents and purposes,—said, he wanted the reversion of his estate, which, by G--d, he should never enjoy,

for he said he loved him, and burst into a flood of tears. He said, his intention was to go to Dublin with his son, who was there to give himself up to the laws, and hoped he had friends to extricate him from his present troubles ; he said, he was sure if his son C. L. Fitzgerald could lay hold of him, he would oblige him to settle his estate on him, or confine him for life ; he said, he hoped shortly to be happy, for his son Robert was to give him money, and all matters would be amicably settled. During the conversation he seemed much affected, felt for his son Robert, and frequently shed tears, particularly when mention was made of the unhappy situation his affairs were in.—From this, Mr. Neligan believed George Fitzgerald, the elder, free in every sense of the word, and under no restraint or controul of his son G. Robert Fitzgerald, or any other person whatever.

JAMES NELIGAN.

KILLALA, Oct. 28th, 1781.

VOUCHER

VOUCHER THE FOURTH.

HAVING heard with astonishment, that George Fitzgerald of Turlow, in the county of Mayo, Esq; has industriously reported, that he was holden in a state of confinement by his eldest son, G. Rob. Fitzgerald, of Rockfield-lodge, Esq; I think it incumbent on me to mention the conversation which, at different times, I had with the said George Fitzgerald. On or about the twenty-eighth day of September last, he came to my house with his son G. Rob. Fitzgerald, to all appearance, in perfect union with him, and free from all restraint whatever; shortly after, he informed me, that his unfortunate son Charles Lionel Fitzgerald, with an armed mob or party, was in pursuit of his son Robert to take his life, under pretence of rescuing him the said George Fitzgerald from supposed confinement,—that however, he would disappoint him

G

and

and his accomplices, in their wicked schemes, for he was free and happy with his son Robert, and would stick by him. The said George Fitzgerald requested I should go to a Captain Hill, brother-in-law to the Lord Bishop of Kilalla, and inform him he wanted an interview with said Mr. Hill or the Bishop, for the purpose of assuring them, or either of them, that the report circulated relative to him was groundless, and that he was as free as his Lordship, or any other man, and the intention of his son Charles was to murder or otherwise deprive his son Robert of his life.

I was present when he desired his son Robert to write to Mr. Knox of Rappa, a magistrate of this county, requesting him to come to Kilalla, that he might declare himself not a prisoner, as was maliciously insinuated, and assure him, he was under no controul, but acted from choice, in continuing with his dear child, George Robert Fitzgerald.

I have

I have repeatedly conversed with him in private, and he has as often declared to me he was free;—that he plainly saw there was a design against his son Robert's life, and doubted not but his enemies who, without reason, were many in number, would gladly assassinate him.

From all this, and from many other circumstances concurring, I did, and do now, firmly believe, that said George Fitzgerald, the father, was free in every sense of the word, and under no restraint or controul, either of his son George Robert Fitzgerald, or any other person whatsoever; and am willing to make affidavit of this, if required.

Given under my hand, at Kilalla, this 27th day of October, 1781.

FRANCIS FALLON.

G 2

VOUCHER

more than to settle with his father, and that as soon as his father pleased he was ready. That deponent then went to George Fitzgerald senior, and told him the words as expressed by the said Geo. Robert Fitzgerald. Deponent saith, that he said George Fitzgerald sent him back to the said George Robert Fitzgerald to acquaint him, that he would go that night to the house of Mr. Redmond Jonings, near Holymount, and that he the said George Robert Fitzgerald should meet him there the next morning, and bring Mr. Christopher Bowen with him, to draw the heads of their agreement, in order to have it laid before council. That deponent then went and acquainted George Robert Fitzgerald thereof, and the said George Robert Fitzgerald agreed thereto. Deponent saith, that as soon as he came back to the said George Robert Fitzgerald and informed him of the same, the said George Fitzgerald ordered the carriage to the door, and proceeded

ceeded on his way towards the aforefaid Redmond Joning's. Deponent faith, he was walking after the carriage, and that in or about a mile from the town of Ballinrobe, George Robert Fitzgerald came up to deponent, and asked deponent if he would permit him to have a little converfation with his father George Fitzgerald. Deponent faid, if he would alight and leave his horfe and fervants behind him, he might ; that the faid George Robert Fitzgerald then alighted, and walked up to the carriage wherein his father the faid George Fitzgerald was ; and faith, that the faid George Robert Fitzgerald walked by the fide of the carriage, converfing with his faid father near a mile ; and that deponent walked after the carriage, within the diftance of about one hundred yards ; and that G. Rob. Fitzgerald came back for his horfe, and told deponent that his father had confented to go with him to Rockfield-lodge.

JOHN FITZGERALD.

Sworn

Sworn before me, at Ballinrobe, in the county of Mayo, this 15th day of Dec. 1781, a commissioner appointed for taking affidavits in said county, and I know the deponent.

MATTHEW PHILPOT.

VOUCHER THE SIXTH.

JOHN SCOTT, servant to George Fitzgerald senior, saith, that he was applied to by Richard Martin of Kenfield, in the county of Galway, Esq; who said he came to informant by the directions of Mr. Charles Lionel Fitzgerald, to know if he would swear, that his master the said George Fitzgerald was taken up by force, and confined by his son George Robert Fitzgerald, to whom this informant gave for answer, that he could not swear any such thing, as it was not truth, as he informant was with
his

his said master, and in the carriage with him, when the said George Robert Fitzgerald came up alone and unarmed, and peaceably and politely addressed his father the said George Fitzgerald, who went home with his said son to Rockfield-lodge, and had he wished not to go with his said son, he might have refused going, he having in his carriage in which informant was three bell-muzzed blunder-busses loaded with swan-drops, and a small ditto, and also three Queen Anne's muskets with bayonets, loaded as aforesaid, and three fuzees, one of which was loaded, together with a small sword. Four powder-horns, all filled with gun-powder, one of which contained three pounds of gun-powder, besides several large bags of musket-balls, swan-drops, and slugs : and had the said George Fitzgerald, this informant's master, been disposed to make any opposition in going home with his said son to Rockfield-lodge, informant would have made use of

of said arms and ammunition in his said master's defence; and informant saith, that he also informed the said Richard Martin, that he was with his said master all the time he had been at his said son's house, called Rockfield-lodge, and that neither informant or his master were under the least restraint, but could, and did go wherever and whenever they pleased. Informant was also afterwards applied to by Terence Martin, late of Fisher-hill, in the county of Mayo, who saith, he came from the said C. L. Fitzgerald with directions to have informant bailed out of gaol, provided informant would go to said C. L. Fitzgerald to Turlow, in the county of Mayo, and *do for him what he wanted*. Informant saith, in order to get out of his loathsome confinement, he promised to go to said C. L. Fitzgerald; whereupon the said Terence Martin procured the said Richard Martin to become bail for informant, whereupon informant was released, and said Terence Martin
also

also gave informant money to bear his charges to Turlow aforesaid; but some time after having overheard the said Terence Martin swear a violent oath, and say to another person, that the said L. C. Fitzgerald would put informant into prison again, if *he did not do what he wanted him to do*; it alarmed informant, who thought it might be something which he could not lawfully do; therefore plied the men who were set over informant as spies, in order to conduct him to said C. Lion. Fitzgerald, with liquor, by which means he was enabled to withdraw himself from them, and made his way up to the city of Dublin.

N. B. This is only an extract of a much larger affidavit, sworn by the said John Scott, before the Right Honourable Henry King, one of his Majesty's privy council: the whole of which affidavit will be inserted in the Appendix of this publication.

BEFORE

BEFORE I dismiss this branch of my defence, my judges will doubtless perceive, that only two of the vouchers above-recited, those, I mean, of Mr. John Fitzgerald and John Scott, are testified upon oath : and that all the others will not be admissible in our courts of law, to invalidate the charge against me, merely because that charge is exhibited *on the special oath* of my accuser; for it is a maxim in law, that "*omne ligamen dissolvendum est eodem ligamine, cum quo ligatur*;" that is to say, "Evidence *on oath* cannot be invalidated, but by evidence *on oath*."——I know, my accuser would have availed himself of this observation, had I not previously made it myself.——But we have another law-maxim of equal weight with the former, namely, "*Id certum est, quod certum reddi potest*."——And although, on account of the sacred functions of some of the above-named witnesses, and on account of the temporal avocations and most respectable characters

acters of the other lay-gentleman, I could not with propriety take the liberty to request the additional sanction of their respective oaths, yet am I authorized to say, that out of mere regard for truth, and the love they bear to justice, they have voluntarily declared their steady purpose to confirm, on oath, the several allegations and facts inserted in their respective letters, whenever and wherever it shall be required by me.

These testimonies having then, in effect, the operation and validity of evidences taken upon oath, I, with the greatest deference and respect, submit them to the impartial judgment of the public, in proof positive, that I did not imprison my father at my house in Rockfield-lodge, or any other place whatever, and that during his visit to me, he was a FREE man, and as such treated by me, with every mark of filial duty, *submission*, and regard.

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It is high time we should now take into consideration, and expose the transcendent iniquity and bare-faced imposition on the public, set forth in the remaining branch of the second charge against me. It states, that I not only should be let into the immediate possession of a very considerable estate and land-property by the death of my father, but that my father had been deprived of his existence, and that his life had been actually taken away, at my instance and by my directions, as Mr. Charles Lionel Fitzgerald, upon the Holy Evangelists swears, and VERILY believes

The Italians have an excellent proverb: "*Qui dici troppo, dici niente.*"— Never was this adage so fully verified as on the present occasion: for every word of this accusation is just one word too much. Not a single word of truth is there in it from beginning to end. For with respect to the possibility, much less to the probability, of my obtaining any
imme-

immediate possession of a very considerable estate and land-property by my father's death, it is well known, in the neighbourhood where I reside, that I had been letten into actual possession some years ago, in pursuance of an order of the Court of Exchequer, and that too at the special and earnest request of my father himself. Nor did I take a simple possession of the estate, and afterwards instantly fly away from my demesne, to spend the rents of it in Dublin, London, Paris, or in Rome. On the contrary, I made it my stationary residence;—a residence, not there to sit and dose away in unmeaning dulness and inactive stupidity, a life burthenfome to myself, and usefess to my fellow-creatures. To feed the hungry, to assist the sick, to cloathe the naked, to employ the poor, and to raise up a spirit of industry amongst my own little tenantry, and make all happy about me.----This was my chiefest study, this the occupation of my private hours.

Nor

Not did I hold the respectable character of a truly worthy country gentleman solely confined to the narrow circle of his own demesne. I, at least, carried my views into a more enlarged extent, not only self, and my own dependants, which were *SELF alio intuitu*, but even the whole kingdom at large, as the place of my nativity, seemed to claim a right to no inconsiderable share of my thoughts, attention, and attendance. On this elevated ground, on this quickening principle, I cast my eyes round about, to learn where and how I could be most serviceable to my native country,—An idea, truly patriotic, occurred to my mind, and pointed out perhaps the only mode by which, as a simple individual, I could in a limited degree promote both the internal safety and welfare of Ireland. I had informed myself, from different vouchers, that we rarely, if ever, have a greater quantity of bread-corn in this island than will hold out for more than six or seven weeks consumption :
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the inference I drew was, that if the naval power of the Houses of Bourbon should continue to be superior to that of Great-Britain, we should then lie at the mercy of France for our bread-corn, and two million five hundred thousand souls might, any time in three or four months, be reduced to the unavoidable necessity of surrendering at discretion to the arms of Lewis XVI. without firing one single cannon, notwithstanding the very powerful armies now on foot for the defence of this kingdom. With political men, to foresee, is to prevent.-----This truly patriotic intent in view, I sat myself to work. Not a day-labourer in my own extensive manors,—not a carpenter, mason, or architectonic artist, for miles around me, but winter and summer were constantly employed. Never less than fifty, and generally a hundred and fifty persons, of one denomination or other, daily partook of my bounty, and punctually received the wages of their industry and labour. In the place where no-

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thing but famine, rags, and naked limbs, had for ages before been known, now appeared a lively peasantry, neat in their apparel, their cheeks glowing with rosy health, and their eyes sparkling with gratitude, content, and joy. I had not only civilized the manners of a rude and almost savage people, I did more, for it may be truly be said,

“ I tam’d the genius of my stubborn
plains.”

The very face of my lands, like that of my villagers, was changed, and so much for the better, that it seemed an entirely new creation.-----The morassy unproductive boggs, which had putrified the circumambient atmosphere, and had for time immemorial been equally noxious to man and beast, were now reclaimed, and afforded excellent pasture to my herds of cattle, and numerous flocks of sheep. In this one year, on my ground were planted no less than
ten

ten thousand timber trees, and thirty thousand acorns: a future navy! crescens in occulto. Two hundred acres of land for wheat had already been brought under the dominion of the plough; and had I not been deprived of my liberty, I had laid out for *this*, and every succeeding year, four hundred acres for the sole culture and growth of bread-corn: an example which if copied to an equal extent by only five hundred gentlemen, could not fail to secure us from the insidious, keen, ever-intriguing views, and naval force of France.—— Nor stopped I here, but having remarked the grittiness, coarseness, and muddy colour of our best wheaten-flour, which I attributed to the bad apparatus of our mills, I appropriated twenty-five hundred pounds for the erection of a mill, now wholly finished, all but its covering-in, and fitted up with the choicest stones for grinding, brought at an enormous expence from France, none being equal to them in any other part of Europe.——

For I had determined in my own breast to bring these two articles of bread-corn and wheaten-flour to great perfection, and in as great a plenty, as they are in our sister-kingdom England. And so far as depended upon my scanty powers, as a single individual, I not only left no stone unturned, but it seemed to me, as if little or nothing had been effected by me, whilst aught yet remained to be effected and accomplished. So zealous and assiduous was I in this work, which I considered as a work of national utility, that with great propriety might be applied to me on this account, that inimitable verse of the poet Lucan.

*Nil actum reputans, dum quid superesset
agendum.*

While I was thus setting an humble, though perhaps laudable example, of agriculture and useful husbandry, to my compatriot nobility and gentry at large, I did not omit giving every possible attention

tention and encouragement to the principal commodity of this country, I mean the manufacture of Irish Linen, in all its various branches. This important article of internal consumption, and foreign export having fallen, by the calamity of the present war, under its intrinsic real value, I purchased all the linens made by my own tenantry, and for four miles round about my neighbourhood, giving a halfpenny a-yard above the market price, and thus preserved this important, this national article of commerce, from languishing and pining away, which otherwise must soon have been the case, had the manufacturers experienced the utter impossibility of acquiring a subsistence by it.

If I did thus widely spread my wings abroad, let it be remembered, I did not desert nor forget my own little nest at home:—for, plenty without profusion adorned my tables; good order and sobriety reigned amongst my numerous

servants; the gates of hospitality were opened alike to rich and poor; while morning and evening prayers, daily administered under my roof, seemed to have drawn down from heaven the invaluable blessing of harmony, content, and peace.—Such, oh! my judges, was my constant pastime,—such the variagated avocations of my life, during a continued residence in the country. Can it then be possibly conceived that a gentleman of high, of noble birth,—a gentleman allied by his own marriages to the most powerful families both in this kingdom, and that of Great-Britain,—a gentleman addicted to such habits of mind, and in possession of that estate, the reversion of which he had actually agreed to purchase for so trifling, so pitiful a sum as three thousand pounds, could have any real motive, or any the least inducement to wish, much less to perpetrate the horrid deed of murder on an aged parent. But where, and how, was the murder to be perpetrated? My accuser charges, that
 my

my father was a prisoner in my own house. So then, to the crime of murder, and that too of a parent, I must have superadded a violation of the sacred rights of hospitality. So apt are men to believe other persons capable of those crimes which they themselves make no scruple to commit. Do you here understand my meaning Mr. Charles Lionel Fitzgerald? or will you constrain me to speak in terms less ambiguous? Perhaps the bare mentioning the name of Mr. Lest-r may suffice to bring back to your your memory, the infamous *tricks* you *played* on that gentleman, while he thought himself safe, at least while he was under the protection of your own house. Or will you compell me to remind you of that *worse than swindling* plan, which you and your chara sposa concerted together; in the first place, to enebriate and stupify with strong liquors; and in the second place, to charge a certain gentleman, Mr. M'D--n--ll, then much under age, with having lost thou-

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hundreds of pounds to you, the over-night at cards ; and all this flagitious scene transacted under your own roof?—And to complete the villainous transaction, both you and your BETTER PART knew in your own hearts and consciences, that Mr. M'D-n-ll carefully avoided to touch either card, dice, or any other species of play, during his visit at your house. —Happy ! for you, Sir, that Mrs. M'D-n-ll, out of regard to other branches of your family, did not apply to Lord Annelly, which you very well know must have been the consequence, had you persisted in your foul, foul, scandalously foul demands on her son, Mr. M'D-n-ll.

But, to return to my own appeal ; were it even to be supposed, that I had been capable of murdering my father, under my own roof, how could such an atrocious deed have been executed, and if executed, how could it have been smothered, and kept from the knowledge of the public ? My house, or rather lodge,

lodge, as it really is, contains but four rooms on a floor; my constant family is thirty odd in number,—every apartment, every room is crowded from top to bottom. My father was seated every day at my table, and always seated where a parent ought, as head and master of my family. Had he been made away with,—had he been deprived of his existence at my instance, and by my directions, would not the servants have missed him at his wonted seat at my table; and though we will say, I might have intrusted the secret of a murder committed in my own house to one or two of my servants, could I prudently, could I safely have intrusted it to them all? And supposing I could have intrusted all my servants, would it not have been an act of consummate folly, or rather madness, on my part, had I, as a worldly-minded man, deprived my father of his existence, when my own worldly interest must have thwarted and opposed any such thought

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intention? For the truth is, I am, in a very great degree, interested in the prolongation of my father's life. He stands indebted to me in the sum of ten thousand pounds sterling; I am letten into possession of the family-estate under an order of the Court of Chancery, to receive the growing rents of *his share* in that estate, in discharge of the debt so due to me, and which, if not discharged during his life time, I must unavoidably lose, because he hath only a life-estate in the premises.-----Besides, if I really was a worldly-minded man, would I have embued my hands in my own father's blood, at a time when the father of my present lady (to whom I had but recently been married) was yet living, *et fectus in vulum redeat*. Would not such an horrid act of murder most assuredly have obliterated any partial opinion he might have entertained in my favour? Would it not have rendered it impossible for him to have thought me worthy of his future indulgence or predilection, favours which,
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in every point of view, are too enviable, and even too lucratively advantageous, to be set in competition with any possible gain I might have reaped, by so infamous a murder as that of a parent?-----For I could not possibly have gained more than my father's reversionary interest in the estate in question, and that interest, it hath already been made to appear was, upon his own valuation of it, no more than three thousand pounds. But so totally foreign and inapplicable to me is the character of a worldly-minded man, that, I believe, my very accuser, Mr. Charles Lionel Fitzgerald, if he be not lost to all recollection, as he is to all shame, must acquit me of any such unmerited imputation. Facts are witnesses which speak loudly and distinctly for themselves.-----Let me then recall to his memory, the generous conduct I observed to him on a very singular occasion :---Lady Mary, my mother, had made her will. She was so obliging

obliging, as privately to intrust me with the contents. The fortune she has at her own disposal is considerable; she had bequeathed the whole of it between me and Mr. Charles Lionel Fitzgerald, share and share alike, except her town-house, furniture, and pictures, in London, which were in the most affectionate terms wholly bequeathed to me. How did I act on this occasion? Did I then write letters to her 'ladyship to blacken his character, and insidiously to warp and estrange her affections from her son Charles, as you Mr. Dean Bailey did, to that very mother, when you blackened my character, to estrange her kind affections from me: Nay, startle not, Mr. Dean, I have the proof, the villainous proof, under your own hand-writing. My religion, Mr. Dean, taught me another rule of action; for instead of underhandedly loading with terms of infamy and blackest reproach, that *monstrum, horrendum, informe, ingens, cui lumen ademptum est*, and which I then called by the tender

tender name of Brother, I say, Sir, without urging any one of his past errors, which might have tended to make any alterations in her will to the prejudice or disadvantage of that son, I desired, I prayed, I entreated her both privately and in his own presence and hearing, that she would be pleased to alter her will in his favour, by leaving him the whole of her fortune ; and the reason I gave was, that he wanted it ; and I thanked God, I had already even more than a competency.

I beg, likewise, to refresh the memory of Mr. Charles, with another little family-anecdote. Some four or five years ago, my father then stood indebted to me only in the sum of five thousand pounds sterling. I knew the payment of it must have put him to the greatest straits. What did I do ? Unknown to Mr. Charles Lionel Fitzgerald, I voluntarily made my father the offer to release the whole of that debt, on condition he would

would settle the reversion of the estate at present in question on that son and his heirs, in default of issue-male of my body. Was this a worldly-minded act? or had Mr. Charles Lionel Fitzgerald any knowledge of it until many months afterwards, or had he ever requested it of me, or had he it in his power to make me any return for it? I mention these pleasing acts of former brotherly love, because, I apprehend, in the eye of the world, they cannot fail to exonerate and clear me of the charge of having murdered a parent, merely to acquire the reversionary interest of that estate which I before had taken so much pains to get settled in absolute fee on his other son, who now, in kind and grateful return, is become my accuser, my prosecutor, my bitterest enemy, and insatiable thirster after my blood.

Whilst I am upon the subject of this reversion, it may possibly be asked, how it came to pass, that the agreement entered

tered into between my father and me for the purchase of it, was not compleated and carried into execution? So far as this question respects myself, I need only observe, that the carrying the articles of agreement into execution, did not break off on my side; but it seems my father had two reasons for not putting the finishing to them. The first was, that after the sentence was passed, by which I am adjudged to suffer an imprisonment for so long a period as three years, he and Mr. Charles Lionel Fitzgerald have flattered themselves, they shall be able to receive the rents of my estate to their own joint and separate use. They have already actually begun to work upon this new plan. Mr. Cæsar French, who had been appointed receiver of the rents under an order of the Court of Chancery, published the following Notice in the Tuam News Papers:

NOTICE

N O T I C E.

THE Right Hon. the Lord Chancellor having appointed Mr. French, of Fairhill, by his special Order to the receipt of the Rents on the Estate of Turlow, in the county of Mayo, the several Tenants of said estate are requested to meet Mr. French at Castlebar, on the 27th inst. to pay all Rents and Arrears due by them, otherwise he will proceed according to Law.

N. B. Mr. French can stay but a few days at Castlebar.

DEC. 13th, 1781.

I myself likewise published an Advertisement in the said news papers, with a Caution to the several Tenants not to pay their rents to any other person or persons but such as should be authorised by the Courts of Judicature.

But

But my father and Mr. Charles Lionel Fitzgerald, utterly regardless of these public notices and warnings, resolutely determined to carry their daring scheme into effect, not only countermanded the above advertisements, but, by inserting a counter-operating advertisement, are now in receipt of the rents themselves, and bid open defiance to the Court of Chancery, as appears by my father's pretended Letter of Attorney to Mr. Charles Lionel Fitzgerald.

TO ALL MY TENANTS IN THE
COUNTY OF MAYO.

I HOPE the Advertisement in the Tuam Paper, under the title of a CAUTION, and signed George Robert Fitzgerald, will have no effect on your minds, and that ye will comply with the Order and Letter of Attorney I gave to my Son Charles Lionel Fitzgerald, (well knowing his love and attachment for you all)

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to receive all your Rents due to me out of said Estate. My title cannot bear the least cavil, it is incontestible, as Proprietor of said Estate, and therefore the only person intitled to receive them. As to the author of the Caution, he only possessed himself by strong force of an armed banditti and cannon: and thus he stood out in defiance of all Law and good Government, for near four years, and is now confined for the same.—His followers and banditti must now fall victims to their rebellious and unwarranted proceedings, and undergo the rigorous sentence of the law. I hope after this intimation to my Tenants, that they will all forget that spirit of revolt that has been so long diffused amongst them, by a man, upon whom there can be no reliance, and who, by a constant and unremitted violation of all laws, human and divine, has reduced himself to the abject state he now is in. And I hope they will now act in the same friendly attentive manner they always did before
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the author of the Caution came amongst them, and not put me under the necessity of taking such compulsory means as ever was, and must be disagreeable to

Your most affectionate Landlord,
and faithful friend,

GEORGE FITZGERALD.

Castle-street, Dec. 4, 1781.

The second reason my father gives for not completing the articles of agreement, is somewhat curious. He saith, he recollects, that about four years ago, he was in treaty with Mr. Cope, the present member for Donegal, for the sale of this very reversion, and Mr. Cope broke off that treaty, by reason that Mr. Charles Lionel Fitzgerald had repeatedly declared in public, no person should ever purchase that reversion, "*without first drinking his blood.*" And it did not clearly appear to my father, but that the grantor, as well as the grantee, might,

it such case, stand equally culpable in the eye of his son Charles.

The only inference I mean to draw from my father's thus declining to carry his treaty with me into effect, took place a few days *after* my trial, and therefore, I apprehend, may be adduced in evidence, that he had not been deprived of his existence, nor his life taken away, antecedent to my trial: and that it must of necessity follow, so foul a crime ought not, on any account whatever, to have been laid to my charge.

Thus have we refuted the falsehoods and calumnies exhibited in the two preceding charges. It remains now to answer and invalidate the third and last charge of my accuser, which, upon the whole, is rather a matter of momentary exultation and short-lived triumph on his part over the cause of truth, than any fresh accusation brought against me: For he only states, that all the various letters,
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advertisements, and paragraphs, which have been inserted in the public prints, as well in Great-Britain as in Ireland, must be true, and can possibly admit of no palliation whatever, because (forsooth!) a verdict hath been found against me, and that in consequence of such verdict, I have received judgment of the court at a county-assizes, to be three years imprisoned, besides the additional punishment of paying a fine of one thousand pounds sterling to the king.

I do not pretend to deny that a verdict hath been found against me, much less do I presume to assert, that no such sentence hath been passed upon me. But, I apprehend, the principal matter worthy any consideration at all in the eyes of an impartial public, is, whether I was tried by an indifferent, liege, and lawful jury; and whether the sentence which hath been passed upon me, be such as can be justified by the known law of the land, or warranted by any one precedent,

of good authority.—For I not only contend, but I insist, that the sentence so passed against me, is a most daring, insolent attack upon, and breach of Magna Charta; but even independent of such breach, it is a mere nullity of itself; and that no common-law precedent of good authority can be found in any one of all our numerous law-reporters, to countenance the exorbitancy of the fine, or the enormous length of imprisonment, and that too in a case where no imprisonment at all could be *constitutionally* inflicted. However, it is some consolation to me, that I am not the first subject of the British empire, who hath experienced an imprisonment of his person, either through a corrupt, or through an erroneous judgment:—And it is no small satisfaction to me to find, that the errors apparent on the record of the judgment here alluded-to are so numerous, as well in matter of mere form, as in substantial justice, that it will be impossible, I apprehend, for all the lawyers in the pay of the crown, either on this
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or the other side of the water, to prevent it from being *finally* reversed.-----The event will prove whether I am right in my opinion or not. I have already brought the writ of error to reverse the judgment, Mr. Hugh Carelton, who was the judge below, already hath allowed it, and the errors which I have assigned are to be argued the ensuing term. And though I have assigned but four causes of error, that part of the public who are not acquainted with law-proceedings, must not conclude from the paucity of errors assigned, that there are not many more on the face of the record.----For truth is as well established by two or three witnesses, as it can be by two or three hundred. All that I seek, is justice to myself. If I were disposed to be merciless, or the least inclined to give a full-length portraiture of the professional abilities of my judge, I could as easily have assigned twenty causes of error, as those few which I have assigned. But I am so far from bearing the man any malice

or rancour, that I have a pleasure in extending to him that mercy which, in my opinion, he did not extend to me. And I hope this lenity on my part, may teach him, should he ever again preside on a bench of crown-law, to act with less precipitancy, more temper, and with some little regard for public decency. This lesson, I flatter myself, will be of some utility to him, as I understand he is now soliciting to be put into the commission for one of the distant circuits at the approaching assizes. May Mr. Hugh Carleton act on that circuit with a little more discretion than he did when he sat on judgment on me ! I would willingly find out some excuses for his conduct towards me. The *first* that at present occurs to me, is, that he is a very young man, subject to all the frailties, impetuosities, and passions, with other men of his age. The *second* is, that my father publicly boasts, that he is a *particular favourite* of this good man's wife,—that for some years he hath been the standing council

council to my father, and occasionally so for the prosecutor Mr. Charles Lionel Fitzgerald, but never employed as council for me. The *third* and last which I shall now ennumerate is, that this was the first time he had ever been elevated from an obscure birth, and *bankrupt parentage*, to the honourable commission of an itinerant justice of oyer and terminer, that he was only a judge *fait à a hâte*, and consequently like most other upstarts, especially when they are men of very scanty abilities, might find himself in an awkward situation, and be all the while under one continued confusion of ideas, and perturbation of mind.—The public will perceive my great tenderness for his character; they will perceive that I could not possibly descend so low as to bear any animosity against him, and that I have not absolutely charged him with having given a *corrupt* judgment. God and he both know whether the judgment be a *corrupt*, or only an erroneous one! On this head, I keep
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my thoughts to myself: I do not positively and in direct terms charge him on the score of a corrupt judgment. *Le jeu ne vaut pas la chandelle.* I very well know, such a charge must, upon conviction of the young man, affect him in body, lands, and goods. But in what respect should I be the gainer by his conviction? As to his *goods*, I assure him, they are not an object to me. I am too much the christian to covet or desire them. Besides, on his conviction they would be forfeited to the crown. As to his *lands*, I believe neither he nor any of his progenitors were ever seized of a forty shilling freehold. And with regard to his *body*, I can reasonably have no wish to defraud or delay the corporation of crows, or that of worms, of a luscious respect, which, though probably, they consider as their just due, yet I do not ambition the office of being their caterer, much less *that* of their carver. It is not then a *corrupt* judgment, I mean, to lay at Carelton's door. But this merciless
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oyer and terminer man of the law must excuse me, if in order to prevent so *anti-constitutional* an adjudication from being ever cited as a precedent on the prosecution of some other person less able to bear the expences, or less determined than I am of obtaining public justice, he must excuse me, I say, if I teach him the country judge's dance, or comedy of errors, which begins *here* by a *pas grave* into Lord Annelly's court, and in its ultimate stage may conclude with a cross-over and figure in the British House of Lords.

To shew, then, I am justified in treating this judgment with that sovereign contempt it deserves, it behoves me to point out such of its errors as must necessarily in one court or other super-induce a reversal of it. For this purpose, though it be a very dry unentertaining subject to the generality of readers; yet I must beg leave to lay before the public, all the law-proceedings, from beginning
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to end, otherwise it will be impossible for them to form any sound opinion, whether I am legally or illegally, constitutionally or unconstitutionally sentenced to an imprisonment of THREE YEARS, together with the payment of a fine to the King of ONE THOUSAND POUNDS STERLING.

Before I come to particulars, I must observe, and I believe there is not a gentleman at the bar but will readily allow, that no suit, whether civil or criminal, can ever be deemed to be perfectly discontinued, until the discontinuance itself shall have been entered on the roll; for then, and not till then, it becomes a matter of record. It will also be allowed, that whenever a suit, whether civil or criminal, shall have been once begun, and the party so having begun, shall be advised to prosecute in some other court, the suit already commenced by him must appear upon the roll to be discontinued, before he shall be entitled to proceed
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de novo in any other court ; I apprehend then, it will entirely overthrow, make void, and nullify the bill of indictment and all other subsequent proceedings on it, commenced by the king, at the prosecution of Mr. Charles Lionel Fitzgerald, against me, if I can shew that, at the very time, this identical same bill of indictment was preferred, the same identical Mr. Charles Lionel Fitzgerald had actually, as plaintiff, commenced a civil action against me for the same identical pretended offence ; and that the said *civil* action was then pending, nor is there at this very hour any entry upon the roll, in proof that it hath been discontinued.

The bill of indictment above-mentioned was preferred on the 3d. of April, 1781, at the Summer assizes holden at Castlebar, in and for the county of Mayo : in the month of November preceding these assizes, the said Mr. Charles Lionel Fitzgerald had sued out against me a *writ de homine replegiando*, for the replevying
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my father, as indubitably appears by the sheriff's return of *eloigned*.

This writ requires much explanation. Staunford, Rastal, Fitzherbet, Coke, and Hale, have given a very imperfect account of it : And yet they were all men of great abilities, but, as too frequently is the case, were unhappily tinctured with the foul lust after lucre, and rather studied to multiply the means and modes of attracting suits and actions into their respective courts, than to write with candour, perspicuity, and demonstration.--- And as the common-law and all the proceedings on common-law suits and actions were so many bars to their thirst after gain, they tried every method within the sphere of their craft and cunning, to banish it out of Westminster-hall.--- And indeed they, their predecessors, and successors, have succeeded so well, that at this day there is scarcely to be found a gentleman within or without the bar, or even upon the bench, who can be prevailed upon to open his lips in favour
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of any *common-law* suit or action, unless he be absolutely goaded to it, by the fuitor to the court peremptorily and undeviatingly insisting upon it, as the only sure and *uncoſtly* bulwark of his liberty, and undubitable birth-right.

To return to the *writ de homine replegiando*, I am to obſerve, that the five judges above-mentioned have handed it down to us in ſuch a manner, that it ſhould ſeem they themſelves were as ignorant of the nature, application, and extent of it, as the generality even of the ableſt council are at preſent. One of the judges above-mentioned tells us, this writ is a *juſtices*, and not returnable; another tell us, it is returnable; a third ſays, it formerly lay in all caſes where any perſon was unlawfully reſtrained of his or her liberty; and that of old time there was no other writ to redreſs that mode of imprifonment. This glorious uncertainty, obſcurity, and confuſion, viſible in our law-guides who were to direct
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our proceedings in this little branch, or rather twig of the law, accounts, in some measure, for the rationale of Mr. Charles Lionel Fitzgerald's singling out this obselete writ, for the liberation of my father from his pretended imprisonment. For let me have taken what steps I would upon it, I must have gotten myself into a labyrinth : and had I taken no steps at all, he would then, in pursuance of a *writ of withernam*, have gotten possession of my body, and thus under colour and sanction of the law he would have obtained the very end which I had been, for the eighteen preceding months, most cautiously endeavouring day and night to frustrate, or render abortive. For, after the affidavits that have already appeared in this Appeal, there cannot remain the least dubiety, but that if so blood-thirsty a monster had once gotten me within his possession and power, he would have been either so tight-laced, or so squeamishly conscientious, as to have spared my
life

life one single moment. But, providentially for me, our cunning little Isaac hath overshotten his mark.—His *writ de homine replegiando* is the very rock he will split on. This is a common-law writ. I will explain it still more clearly:—Before the reign of Henry the Third, there was no such thing either known or heard of in England as *statute-law*. The several articles entered into, ratified and confirmed, by and between William of Normandy, surnamed the Bastard, in one part, and the English bishops, nobles, and commons, on the other part: and the several articles declaratively confirmed in and by that other treaty of King John, in one part, and the kingdom of England, on the other; emphatically styled “*PAX inter Dominum REGEM & REGNUM* ;” but better known at this day by the name of *MAGNA CHARTA* ; these two treaties, I say, contain, either by expression or by relation, all the laws, rights, and liberties, that were known before the introduction of statute-laws ;

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and these two treaties under one general denomination, were and still are called THE COMMON LAW. The *writ de homine replegiando* was one of the common-law writs.—That of *odio et atia* was another. These were the only two writs known to the common-law for the liberation of such persons as were imprisoned contrary to law. But there was an essential difference between the one and the other. For the latter only lay where the party had been imprisoned by special commandment of the king, or by some other legal writ: The former, only where the party had been put under confinement without any such commandment or writ. The latter, also, only lay where the party was a *free* man; the former, only where he was a *villain*. Likewise on the latter, if, after inquisition taken, the sheriff returned *felonice*, then the party was prosecuted at the suit of the crown: if the return was *maliciosè tantum*, then another writ came to the sheriff to bail him, and the party was put to his action
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for recovery of damages. On the contrary, the sheriff made no return on the *homine replegiando*, but left it with the headborough of that particular decenry, in which the party was alledged to be confined. This step taken, the headborough presented the tort at the next court-baron, and the decenners gave summary judgment upon it, which generally was, that the villain should remain with, or be delivered to his own proper lord, with damages for the loss of his time, which damages were assessed at one penny or three pence per diem, according to the specific valuation of the villain's time. But neither pending this writ, nor before the action commenced, nor after if it had been ended, could the crown prosecute, for the three following reasons :---First, because it is a maxim in our laws, that *de minimis non curat lex regis*. Secondly, because a villain, who never had been sworn in any view of franc-pledge, and consequently was not *liberhomo*, could never properly be said

to be restrained *de sua libertate*. On this ground, though the holding a villain in confinement was an unlawful act, yet it is plain, it could possibly be deemed no other than a private tort, and by no means a public offence or breach of the peace.

Such was the nature, such the particular appropriation of this writ *de homine replegiando*. But the writ *de odio et atia* having been suppressed by act of parliament; and the superior courts, ever greedy of their own emoluments, indemnified themselves of the loss they sustained in the suppression of this writ, by perverting the writ *de homine replegiando* out of its natural, legal channel, and applying it to all cases, without paying any regard to the party's being a free man or a *villain*.-----And though this stretch of judge-craft, was autocratic in itself, and as scandalously unwarrantable as their *ac etiam, clausum fregit*, and *quo minus*, is at present, yet they continued the

the practice of it, till the act of Charles the Second for converting *villainage*, and other base tenures, into free and common soccage; nor would they then have so easily given it up, had they not obtained a new modification of another writ, a hundred times more lucrative to them, I mean the writ of *habeas corpus*, which was enacted in the 31st of the same reign.

Thus have I given a short, historical account of the rise, progress, and statutable death of the writ *de homine replegiando*, which had hitherto, partly through wilfulness, and partly through ignorance, been either misconceived, or purposely misrepresented by the several law-writers who had written upon it. But no one hath handled it more confusedly, nor more erroneously than Sir Edward Coke; nor was it to be wondered at, because at the time he wrote his second Book of Institutes, in which he superficially

touches upon this writ, he had never read our Saxon laws, and consequently, of his own knowledge, could give no clear ideas of it.

I have been thus concise and precise in explaining the nature, and the general as well as the particular powers of this writ, in order to prove that it is a common-law writ; that as such, none but common-law proceedings can be had upon it; that as such, none but common-law damages can be given by it; and that not only during its pendency, but even after the final conclusion of the action grounded upon it, it bars the crown from commencing any prosecution against the defendant, and this for a twofold reason:—first, because the royal Lion of England preys not upon mice; and secondly, because the writ itself gives double justice to the party wronged, for he both recovers his villain and damages at one and the same time.

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I am not to be told by Mr. Justice Bourn, nor even by the Lord Chief Justice himself, that in cases of trespass *vi et armis*, the wrong doer is subject both to an action at the suit of the party, and to an indictment at the suit of the crown. For, suppose I was to allow this doctrine in its full extent, it would not then follow, that a *civil* action and a *criminal* prosecution shall be carried on against the trespasser at one and the same time. If the party aggrieved shall first commence a civil action against the trespasser, certainly it shall be a good bar against the crown's prosecuting him, at least, pending the civil action. So, on the contrary, if the crown first commences a prosecution against the trespasser, certainly it shall be a good bar against the party aggrieved, bringing a civil action for the recovery of damages, at least, pending the prosecution at the suit of the crown. But I do not allow this doctrine indiscriminately, to be law in all cases, and in particular, not in any one case

where the writ *de homine replegiando* lies. For that writ is only applicable to cases in villainage, or to cases in *confimili gradu*. And I have observed before, that all such cases are *too base* for the intervention of the crown-law.

*Nec DEUS interfit, nisi DIGNUS vindice
Nodus.*

I may possibly be told, that this writ hath been used in other cases. What then? does the misapplication of a writ, and a bare quiescence in such misapplication, give it any real authority? or must not a nonsuit have ensued, had the propriety of such writ been called in question? The undeviable rule with regard to *this*, as well as to all other writs in general, is simply this, *chescum briefe eyt sa propre nature, et nul ne soyet plede pur autre*. From this undeviable rule I then conclude; that as the plaintiff, Mr. Charles Lionel Fitzgerald, had, at his option, three different writs for the libera-

liberation of his father, namely, the *habeas corpus*, the writ *de manucaptione*, and the writ *de homine replegiando*, and had singled out the last mentioned writ, he was obliged to pursue that writ to its final conclusion, and as in consequence of judgment upon it, he would have obtained the recuperation of his father, and have also recovered full damages, I insist that an indictment could not have been brought against me, pending that civil action,

I have one word more to say, with respect to the proceedings which have been had upon this writ *de homine replegiando*, so far only as it concerns this particular case. In page 142, I mentioned, that the sheriff had made his return upon it.—— This return, which was an *elongatus*, was not, it seems, perfectly palatable to the plaintiff, Mr. Charles Lionel Fitzgerald. It thwarted all his views. It blasted all the sanguine hopes he had conceived of getting me within the walls of a prison.

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For he had been taught to believe, that bail would not lie upon this writ. So that he had nothing more in contemplation than to procure this writ to be served upon me, and then he was convinced in his own mind, I should be fairly cooped-up in a prison, till the matter could be argued and decided in a court of judicature, which would necessarily require three, if not six months. As to the liberation of his father, that was only the plausible, not the real cause of action. He knew his father was not restrained of his liberty, all he wanted, was to deprive me of mine, if the sheriff's return of *elongatus* frustrated all his pleasing dreams, what must he have suffered when he came to understand that the action itself was bailable. And that it is so, will be plainly made to appear. For at common-law there are only five crimes which are unbailable. These are treason, arson, open murder, open rape (called *ran*), and violent house-breaking.---These, in our Saxon-law
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language are called **BOOTLES**; in Latin, *crimina inexpiabilia*.----Now, as the offence with which I am charged, is only that of a common trespass, and consequently not classable with any of the above-mentioned crimes, it, of course, was bailable. I say, *of course*, for tho' there be other offences made unbailable by the 1st of Westminster, yet my pretended offence did not come within any one of those new-created offences. Besides, the trespass I am supposed to have committed, was an offence at common-law; a common-law writ had been sued out upon it, and therefore was governable by common-law proceedings, and the statute of the 1st of Westminster, or any other statute whatever, had no cognisance of it. Mr. Charles Lionel Fitzgerald having possibly acquired this knowledge, and, upon farther enquiry, having learned that the sheriff's return, as above-mentioned, had actually been filed, grew desperate, stormed, swore and raved like a madman. In this raging fever of the brain,

brain, he writes a threatening, intimidating letter to the sheriff, and insists upon his altering the return.—The sheriff knowing, by report, the violent blood-thirsty character of my plaintiff, posts up to Dublin for the best law-advice he could get, in this embarrassing dilemma : His council, Mr. Ratcliff, is clearly of opinion that the return is a good and very proper return. With a man who snaps his fingers at all law, with a man,

Qui impiger, iracundus, inexorabilis, atrox.

OR RATHER

Qui jura negat sibi nata nihil non arrogat armis.

With such a man, such a savage Caliban, such a furious wild beast, I say, of what avail can be the opinion of one single council, however eminent in his profession, or indeed all the opinions of all the counsellors, or all the judges in the whole British empire? The return
doth

doth not please him, it therefore must and shall be altered. In vain with him does the sheriff urge the opinion of so found, and respectable a lawyer; in vain does he remonstrate, that the return being already filed, is become a *record* of the court. No matter; passion hath neither eyes nor ears; the same answer is returned,---it must and shall be altered, or -----.

This word, this single monosyllable *or*, was too intelligible to the sheriff: for he could not but recollect and call to mind, the villainous blood-thirsty deed which had so recently been perpetrated in his own county, in the confines of Bellcara and Monola, by the same Mr. Charles Lionel Fitzgerald.---For sure the fields are still dyed with the blood-gore of Captain Swords. And doth not the whole neighbourhood still ring with the foul murder? And you, you Mr. Charles Lionel Fitzgerald, after you had thus coolly imbrued your hands in your companion's blood, and deprived a mother of her only son, did you not accost that

that mother, while under all the sharp agonies of her deepest affliction, and, with unparalleled brutality, tell her in the public street in the open face of day, that she might blubber on, if she liked it, but, for your part, you was only sorry she had not another son, as you had another pistol ready for a like occasion.—Hah! do your cheeks turn pale? Does the shrill cock, that ever-wakeful monitor within the breast, begin to crow, and warn you of the near approach of morn? What! are your deeds so evil, you cannot bear the least dawn of day? Is your conscience then but slightly scared, and not quite grown callous to all reflection? Pity you had not learned that very difficult, but (to you) most flattering science, the science to forget!—Or if you have, what pity you cannot teach it to that weeping mother, whose only son you murdered in cool blood!—Pity you cannot teach it to an only brother, whose life you would have falsely sworn away!

Pity

Pity you could not teach it to Mr. Sheriff Blake ! but he remembered your black deeds too well, ever to venture to walk the public streets of Dublin alone. Hence was he always attended by his name-fake, an excellent sword-man, after you had once vented your threats, and hinted to him what he might expect, if his return of the writ should not be altered to your liking. And, Sir, was not Mr. Sheriff Blake, at last, constrained to give a forced assent ? Was not this return, in consequence of your threats and menaces, at last brought before the Chancellor ? And what, Sir, was the Chancellor's answer ? Why, when his lordship was given to understand that the return had already been filed ; and after it had been thus filed, that you yourself, or your attorney for you, had defaced, cancelled and nullified it, by drawing a line across it ; his lordship's answer was, that you had barred the court from giving you any relief in the premises. Was you one jot better satisfied with the Chancellor's official answer, than

than you had been with that of Mr. Sheriff Blake? Did you not apply again and again to the Court of Chancery? And did not one of the masters of that court, out of a dread of falling under your vindictive malice, or some other reason best known to himself, at last inform his lordship, that on a sheriff's return being either improper or inefficacious, *it was not contrary to the practice of that court to grant an order for a NEW WRIT*. And thus the Lord Chancellor of Ireland submitted his better opinion and sounder judgment to be over-ruled by the dictates of a person, who can be considered in no higher light than that of an *amicus curie*, and those dictates, big too with oppression, and contrary to all fair practice. That it is big with oppression, and fatally so to me, I shall plainly shew. For if a *new writ* had not been granted, the plaintiff must have proceeded upon the former one. If he had then sued out a *withernam*, and after that an *alias*, I might, and most certainly should, then have bailed the action.---

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And it is highly reasonable to suppose, I should not have asked any persons to have been my bail, but such gentlemen as, of their own knowledge, were absolutely certain that I had neither assaulted, battered or imprisoned my father; and thus the plaintiff would have had no colour whatever, nor pretence, for preferring his bill of indictment. Or if he had so done, the testimony of my two bail, or in their absence, the sheriff himself, who is always in court at the assizes, would have been a sufficient evidence to have invalidated the credibility, or even the possibility of the offences charged in the indictment against me. So that I am peculiarly injured by the Chancellor's order for granting a new writ to the plaintiff; for to that writ may I attribute my present imprisonment, and the fine of £3000, which I am sentenced to pay to the King.

That the order for granting the plaintiff a new writ, under the circumstance

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above-mentioned, I am bold to say, is contrary to all practice. I do not presume to say, that new writs have not been granted to vacate and avoid a sheriff's return. But what I contend for, and insist upon, is, that as I was not at Rockfield-lodge when the sheriff came there to serve the writ *de homine replegiando* upon me, the return of an *elongatus* was the only good and proper return which the sheriff could have legally and regularly made in that case. And farther, as that return had not only been actually filed, (and consequently had become a RECORD of the court) but had also been ERAZED by the plaintiff himself without the privity, assent, or consent of the defendant, or of the sheriff, or of the court: I say, the Court of Chancery, under such circumstances, clearly and most indubitably exceeded its authority and powers, in granting a new writ to the plaintiff. For though in cases where the sheriff's return hath been glaringly improper and utterly inefficacious,

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the Court of Chancery may have granted the plaintiff a new writ, yet in the present instance neither of these *equitable* reasons could be alledged in order to induce the Court of Chancery to grant a new writ. For the return of *elongatus* was highly *proper*, and it was also *efficacious ad certum quid*; for it regularly and in due order *effected* (or rather should have effected) the issuing of a writ of *withernam*, by which, or at least by a *pluries*, the plaintiff would either have obtained the liberation of his father, or he would have gotten possession of my body, in lieu of his father's, and thus he would have obtained substantial justice, and I myself should not have been injured at all.

Having thus fully shewn that the indictment for the pretended offence which hath been found against me, is principally, if not solely, attributable to the granting of a new writ to the plaintiff, where neither in law nor in equity any new writ could constitutionally, or even

precedentedly have been granted, I come now to take into discussion the indictment itself. A similar one, I am bold to say, never yet hath appeared in all the law-annals of this, or of our sister kingdom Great-Britain.—For whether we consider the prosecutor for the crown, or the affidavit on which the prosecution is grounded, or the conduct of the justice of the peace before whom the affidavit was sworn, or the deputy-sheriff who impanelled the jury, or the jury who found the verdict, or lastly, the judge who passed sentence upon me, it cannot fail to make the blood run chill, as it affords too shocking and too incontestible a proof of the dreadful depravity of morals, which fatally pervades every branch of a certain family, whose vindictive spirit hath frequently been too severely felt throughout the county of Mayo, especially at a *thin* assizes.

The prosecutor on behalf of the crown is the same identical person who assumed
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the character of plaintiff on the *writ de homine replegiando*. It is no other than Mr. Charles Lionel Fitzgerald, *alter at idem*. In his *prior* character of *plaintiff*, it hath been shewn, that he signalized himself with erasing a record, bullying a sheriff, and shewing a sovereign *contempt* of a lord high chancellor's positive orders of court. In this *latter* one of *prosecutor* for the crown, he contents himself with assuming the humble and underline characters of informer, constable, and rent-gatherer, to his father.

It may, perhaps, be objected, that in calling him by the odious appellation of an INFORMER, I have not adhered, in strictness of law-language, to the technicality of law-terms. I beg to be clearly understood.——For, the word *informer*, hath a particular, as well as a general meaning. I grant, indeed, in its particular sense it is properly applicable to that species of detestable beings, who become evidence for the crown on penal

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statutes,

statutes, for the special purpose of sharing a certain portion of the pecuniary penalty along with the crown. But in its general sense, it is equally applicable to a prosecutor upon an indictment, with this difference only, that in indictments the prosecutor is oftener called an Informant than an Informer.-----The two terms however differ not in effect, especially where the informant, under the cloak of doing a public good, is solely actuated by the principle of self-interest, and hath really and *bonâ fide* no other end in view, but the plunder and profit he may derive, like another Judas Iscariot, from the accursed wages of voluntary oaths and pestiferous affidavits. In order then to judge whether Mr. Charles Lionel Fitzgerald had any interested views in making so plump an affidavit against me, as it will presently appear he hath done, let us a little examine what was his conduct? Was it that of a gentleman? If so, would he have de-
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meaned himself so basely, as to have turned informer. Was it that of a man of honour? If so, would he, like a common catchpole, have served the warrant upon me his self, as he actually did? Was it that of a brother? If so, would he not have kindly given me some little notice before hand, that an affidavit was actually preparing to be made against me? Was it that of a christian? If so, could he in *foro conscientie* have sworn upon the Holy Evangelists, that he VERILY believed I had murdered my father. I repeat the word VERILY, because it is not uncommon in indictments, for the examinant to swear, that he believes such or such a thing; and his evidence in such case amounts in law only to a *simple belief*, and the examinant is not punishable for the falsity or groundlessness of such a deposition: but if he adds, that he VERILY believes it, which is in other words to say, "that he believes it as the verity or truth of God is in him," I apprehend, that if such evidence shall be

found in *foro ecclesiastico* to be notoriously false and groundless, the party would justly be not only deemed, but actually convicted of *perjury*. If then the active, the efficiently active part, my accuser hath taken, be entirely inconsistent and incompatible with the character of a gentleman, a man of honour, a brother, and a christian, we cannot but attribute his conduct to the vilest of all motives, namely, an insatiable thirst after the blood, or at least the property of that person who stands in his way, and is an intermediate bar to the gratifications and accomplishment of his secret and selfish views. By this rule, let us for a moment mark out and square his conduct. It is clear he could have reaped no advantage, either lucrative or otherwise, had he not prosecuted me to effect. Nay, he had entered into a recognizance to forfeit and pay five hundred pounds to the King, in case he should not prosecute me to effect. But was there any gentleman,

or

or any other person in the kingdom jointly bounden with him? Or, was he his self at that time worth the five hundredth part of that sum, either in possession, remainder, or reversion? All his hopes then of any private emolument must have been concentrated in the sole, and highly improbable, pre-assurance of my conviction. Well,---but after my conviction and confinement in Dublin, did his conduct vindicate that he had acted upon any other principle than that of the public good? Or did it betray any selfish views? Or did he actually obtain any private benefit, emolument, or possession of my lands and goods, either legally or illegally? It is a point of great nicety to judge with strict impartiality in one's own case, I therefore will only state a few facts, and as I have appealed to the public, I will leave it to the public to give their verdict, and abide by their yea or their nay. Let Mr. Charles Lionel Fitzgerald's affidavit then speak for itself; it may be proper however to pre-

premise that it was sworn before Mr. Edward Jordan, one of his Majesty's justices of the peace for the county of Mayo, on the second day of the Summer Assizes holden at Castlebar, in the year 1781, in and for the said county.

T H E
E X A M I N A T I O N
O F
CHARLES LIONEL FITZGERALD,
OF DUBLIN, ESQ.

County of Mayo, } WHO being duly sworn
to wit. } and examined on the
Holy Evangelists, deposeeth and saith,
That on the last day of the Assizes held
at Ballinrobe, in and for the said county
of Mayo, examinant left George Fitz-
gerald, Esq; his father, in the said town
of

of Balinrobe, preparing to meet examinant on that night at a friend's house, in his way to the city of Dublin. Deponent faith, he heard and believes that on the said day said George Robert Fitzgerald at a head of a party of five or six men, armed with blunderbuffes and other weapons, and amongst whom were John Chaunor and William M'Cale, the servants of the said George Robert Fitzgerald, in this county, stopped the chaise in which the said George Fitzgerald was proceeding on his journey to the said neighbour's house, in his way to the said city of Dublin, and with a cocked pistol directed at the said chaise, and with force and violence caused the said chaise to be driven to Rockfield, the place of residence of the said George Robert Fitzgerald, contrary to the will and desire of said George Fitzgerald, who was heard several times to cry out Murder, and to call for assistance : The Deponent heard and believes that said George Robert Fitzgerald and said party have Deponent's father ever since

since kept him and also the said driver closely confined with a dangerous wicked armed mob, who, as examinant is informed and believes, have had directions from the said George Robert Fitzgerald since his confinement, to stand centinels by way of securing in said confinement the person of the said George Fitzgerald, so as to prevent, by any means of chance or accident, the enlargement of said George Fitzgerald. Examinant saith, that finding his said father was in manner as aforesaid, imprisoned and concealed in private custody, so as to prevent his having intercourse with any person, but such as the said George Robert Fitzgerald should approve of.--- Examinant, in a few days after, he had heard of his said confinement, prevailed on two gentlemen, Thomas Buckenel Lyndsay and Arthur Lyndsay, Esqrs. who, he imagined, were intimate with the said George Robert Fitzgerald, for the purpose of getting to influence the said George Robert Fitzgerald to enlarge the

the said George Robert Fitzgerald, examinant's father; and Deponent faith, they accordingly attended at Rockfield, as they informed Deponent, and which Deponent believes to be true, and demanded the release of examinant's father from the said George Robert Fitzgerald, but the said George Robert Fitzgerald informed the said Lyndsays, as Deponent believes, that the said George Fitzgerald was not detained there by any force, but remained there at his own free option, and agreeable to his own desire. Deponent faith, the said Lyndsays then, as Deponent is informed, demanded to see him, so to receive that information personally from him, and that a servant was sent up to the said George Fitzgerald, who brought for answer, that he was not well, and would not see any body that day; but on the said Lyndsays insisting, as they informed Deponent, and which he believes to be true, to see the said George Fitzgerald, that he was brought down, and the said
Lyndsays

Lyndsays informed him, that they came from Examinant to know from his own words, whether he was detained and kept prisoner by force ; to which the said George Fitzgerald did not care to give any answer : but when they declared upon their honour, that they came as friends to Examinant, he burst into a most violent flood of tears, and throwing himself on his knees, and told them that he had been forced there, and was detained and kept prisoner contrary to his will, and begged for God's sake, as men of honour, that they would release him from his confinement, for that he dreaded the fatal consequence, if they did not ; to which the said George Robert Fitzgerald said, as informant is informed and believes, he would consent, and that he would order the carriage in which the said George Fitzgerald was carried to Rockfield, to be got ready to take him away.-----Deponent says, the said Lyndsays, as Examinant believes, not seeing

seeing the carriage come to the door after delaying a considerable time, made different applications for the same, which was not complied with. Deponent saith, the said Lyndsays, as he is informed and believes, then offered one of their horses to him to ride along with them to Castlebar, to which the said George Fitzgerald answered, that he would not desire a horse, but would run a-foot with them, sooner than remain after them.—

“ Deponent saith, the said George Robert
 “ Fitzgerald finding that the said George
 “ was determined to quit him, told the
 “ said Lyndsays and Examinant’s father,
 “ that he was determined he should not
 “ go, and that they might therefore make
 “ themselves easy on that head; on which
 “ the said Lyndsays, as they informed De-
 “ ponent, told said George Robert Fitzge-
 “ rald that they would represent this af-
 “ fair as it happened to this Examinant and
 “ the public:” And saith, that finding up-
 on several applications for the enlargement
 of his said father, that he could not pro-
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cure the same, he had the situation of his said father represented to the courts in Dublin, to see if any mode could be adopted for obtaining the liberty, but finding the same ineffectual, on account of the armed force with which the said George Robert Fitzgerald had confined said George Fitzgerald, and that the orders of the court were ineffectual; the same was accordingly represented to government, who ordered Examinant military aid, so as to obtain the liberty and freedom of Examinant's father. Deponent saith, that the said order of government was obtained about a fortnight ago, since which time the said George Rob. Fitzgerald has been collecting men to the amount of about two or three hundred, as Deponent is informed and believes, employed; and his said party is procuring cannon, erecting batteries, and cutting trenches, so as to make it impossible to enter the same, or to search for the said George Fitzgerald. Examinant saith,

faith, he has been informed by two gentlemen of character and consideration, and which he believes to be true, that one John Fitzgerald, an active and confidential person of the said party to the said George Robert Fitzgerald, took his oath in the presence of these two gentlemen, that said George Robert Fitzgerald's directions to him were, that if the order of government for military was obtained that they would put him to death, so as that Examinant should not obtain his releasement alive. Examinant faith, that under these circumstances, and from private information which Examinant hath lately received of the said George Robert Fitzgerald not having been seen for six or eight days past, on account of the various threats of the said George Fitzgerald and his armed party, and the interest and advantage which the said George Robert Fitzgerald would receive if the said George Fitzgerald was deprived of his existence, in obtaining the immediate possession of

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a very considerable estate and land-property ; that he apprehended and verily believes, that the said George Fitzgerald, examinant's father, hath been made away with and deprived of his existence, by taking away his life at the instance and by the directions of said George Robert Fitzgerald, and by his said party.

Sworn before me, this 8th day of
Sept. 1781.

E. JORDAN.

(A TRUE COPY.)

Informant is bound in the sum of £500.
to prosecute.

(Signed) CHAS. LIONEL FITZGERALD.

THIS

THIS examination thus taken, and speaking the irascible language of family-discord, as it too plainly does; one would have imagined Mr. Justice Jordan, who hath been many years in the commission of peace, would have had the prudence and precaution not to have delivered a warrant into the very hands of the informant, but on the contrary, have directed it to some proper officer of the county, or other person no ways connected with the family, either in interest, consanguinity, or alliance. What am I to conclude from this, to me irreparable malfeasance on the part of Mr. Justice Jordan? Shall I call it stupidity? that were to affront his worship. Shall I term it ignorance? that were to expose myself to an action for defamation. Shall I call it an Irish bull? that might be tortured to reflect upon the acting governor of the county of Mayo, for having admitted a beast into the commission.—If then for prudential reasons, I must not say his malfeasance was the sheer effect

of stupidity, ignorance, or blunder, there remain but two causes from which it can possibly originate, namely, partiality to the informant, or contempt of his own corporal oath. There is no absolute necessity for me to ascribe it to the former, more especially as the latter uncontradictably stares him in the face. I say, uncontradictably, for the corporal oath which every justice of the peace is by statute obliged to take, concludes in these imperative words: "You *shall not* direct, nor cause to be directed, any warrant (by you to be made) to the parties, but *you shall* direct them to the bailiffs of your county, or other the king's officers or ministers, or other INDIFFER-ENT persons, to do execution thereof. "So help you God." What faith good Master Jordan now? Doth he not know that the contempt of every statute is *indictable*, where no particular punishment or penalty is mentioned in it? If he doth not, experience soon shall teach him that necessary branch of his duty,

as

as examinations are already taken before a competent magistrate for that special purpose. And thus take we congè of good Master Edward Jordan, leaving him to ruminate *tour à tour* and chew upon my preferring an indictment against him at the next assizes, with what stomach best he may.

Return we then to Mr. Charles Lionel Fitzgerald, who having been thus *unlawfully* entrusted with the execution of the warrant above-recited, was too eager and impatient to leave that part of his *constabulary* office one single moment unexecuted. My having been sworn one of the grand-jury many hours before his examination upon oath had been taken, was no bar to his impetuosity; the grand-jury room in which I was sitting, and actually deliberating upon the business of the county, was no check to restrain him from serving the warrant upon me; though, on the score of his near consanguinity to me, he might possibly think himself not transcendently culpable in

not standing upon over-much ceremony with me, as only a single grand-jury man ; yet sure there was some respect, some decency due to the collective body of the gentry of the whole county, who were then and there assembled and sworn upon the grand-jury. But it is not to know Mr. Charles Lionel Fitzgerald, to suppose that any place or person can command the least respect at his hands, when either his interest or his passions are in the way. The sequel proves this opinion of him. For scarcely had he gotten possession of the warrant which Mr. Jordan, in violation of his oath of office, had directed to him, but into the grand-jury room he furiously rushes, collars me by the throat, in the most blasphemous language, tells me, I am his prisoner, and instantly begins dragging me by main-force out of the grand-jury-room. Unexpected and unmerited as this violent assault was upon me, yet I neither lost myself, nor did I lose that respect which is due to every warrant
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of a justice of the peace, be the magistrate ever so unworthy of respect himself. Accordingly, thus collared as I was, I addressed myself to the grand-jury, requesting their protection, and at the same time declaring, that if the warrant wereailable, I would instantly put-in bail to it: or if it were not, I would patiently submit to the laws of my country.

Mr. Carleton, who then occasionally officiated as the mouth-piece of the bench, immediately ordered both me and Mr. Charles Lionel Fitzgerald to be brought before him; but scarcely had I approached the vestibule of his court, (still collared by my ruffian-like constable, Mr. Charles Lionel Fitzgerald) when the judge vociferated from the bench, "Commit him, commit him; I say, Mr. Sheriff, why do you not take him into custody."

Conscious to myself that I had done no act whatever that might authorize or

justify such ungentleman-like and unjudge-like behaviour towards me, I addressed myself to the bench, and with much composure of mind, asked Mr. Carleton if he would commit me without hearing what I had to say in my defence. Sir, replies this furious, hot-brained Pontius Pilate of a judge, I shall first commit you, and if you have any thing afterwards to alledge upon oath, the court will hear it, if such shall be their pleasure.

I own the picture which Virgil hath drawn of a certain judge, who *first* punished, and *then* heard the persons who had the misfortune to be brought before his bar, pressed strongly on my mind, and I could not but think there was a striking likeness between Mr. Carleton and Radamanthus.

Gnosſius hæc Radamanthus habet, duriffima jura,

Caſtigata, quædita dolos—

I believe,

I believe, Mr. George Brown, the foreman of the grand-jury, who was then seated on the bench with Mr. Carleton, must have entertained ideas somewhat similar to mine on that occasion, notwithstanding, I say, he most doubtless was pleased in his heart, at the *preposterous* sentence Mr. Carleton had passed upon me.

My reason is this.—I could possibly expect no favour, no lenity, no mercy, at the hands of Mr. Foreman. There unhappily existed a rank, inveterate hatred between his family and mine, of near forty years standing. My father, it is well known, was apt to speak his mind too freely, and he would never suffer the old *felonious* story of smuggling eight or ten thousand pounds of wool at a time to die, nor that other family-anecdote of the Gottenburgh vessel which was stranded at Westport. These two blots in the scutcheon of the Altimont family, my father was perpetually reviving. And as
I have

I have the unhappiness (for such I may truly call it) to be the son of that father, the Altimont family have always considered me in the light of an hereditary, professed enemy. Upon this account, have they in various instances of my life done me, yes, and clandestinely done me, every disservice and unneighbour-like act within their little sphere of activity.

I have introduced these fugitive epifodical circumstances only to shew, that though the foreman, Mr. George Brown, twitched Mr. Carleton by the sleeve, on his passing so temerarious and preposterous a sentence upon me, it was not done out of any favour or affection towards me; on the contrary, he plainly saw that Carleton had exceeded all the bounds of moral, natural, revealed, and municipal law, and therefore held it necessary to step in and remind the judge himself, and not me. There is such a thing, as to overact one's part. Mr. Carleton cer-
tainly

tainly had done it, and stood in need of a monitor at his elbow. And thus we see the true reason of Mr. Brown's interposition. It was not, that I should not be committed to the county goal, but that his friend, his bosom-friend, his alter-ipse, should not betray such misconduct, as some person might interpret to be either an insolence of office, or a partial predilection. And here we see the true grounds, and real cause why

—*Cynthus aurem
Vellit, et admonuit.*

Upon this Cynthian admonition, Mr. Carleton, the Delphic oracle of our assizes, recalls his former sentence, happily before it was carried into execution, and permits me to alledge what I had to say in justification of myself. It doth not require a hawk's eye at all times to read the complexion of a court. By Mr. Carleton's previous rash conduct, it should seem as if he had, in some measure, pre-
judged

judged my cause already. I therefore avoided entering into any long harangue, more especially as it was near 4 à-clock.

Accordingly, I contented myself with telling him, that the grand-jury were now in court, and I appealed to them, whether I had not acted calmly, peaceably, and passively, under the unparalleled assault that had been made upon me, in the grand-jury room, and whether Mr. Charles Lionel Fitzgerald was not the sole aggressor and transgressor. Certainly Mr. George Brown, our foreman, who then sat upon the bench with Carleton, might, had he been so disposed, have most conscientiously answered in the affirmative. All that I should have wanted of him was, that he would only have spoken the truth, the whole truth, and nothing but the truth. It was his province, it was his duty to have done so. However I was not without a friend on this trying occasion, for Mr. Brabson immediately observed to the judge

judge that the affair was so indubitably clear, he was persuaded that even Mr. Charles Lionel Fitzgerald his-self would not deny it, were the court to put the question to him. After this declaration from one of the grand-jury, it was impossible either for Mr. Charles Lionel Fitzgerald to deny the fact, or for Mr. Carleton, consistently with his official oath, to have connived at so enormous and bare-faced a breach of the peace.—

Accordingly again thundering forth a full diapason from his stentorian lungs, he gave (but, I suppose, not in earnest) strict commands to the sheriff to take the younger Fitzgerald into custody, which, by the bye, never was done; and then addressing himself with a palid countenance and bivering lips, as conscious of having done me an injury, told me, I was now at full liberty, provided I entered into recognizances to appear at my trial during that and the subsequent assizes, in the moderate sum (for Carleton is a man of moderation) in the moderate sum,

sum, I say, of two thousand pounds myself, and each of my sureties one thousand more : and thus was I and my two securities bounden over in the sum of four thousand pounds, to keep that very peace which Mr. Charles Lionel Fitzgerald, by his own confession, had broken, and which I had not : and yet, by some leger-de-main or other, the real aggressor and transgressor was not taken into the sheriff's custody, nor even bounden over by Mr. Justice Carleton, for the security of the peace, in one single shilling. Upon my word, Mr. Hugh Carleton, if I am to consider these unprecedented proceedings of yours as indicative of the true standard, and exact measure of your knowledge in the criminal laws of this country ; or if I am to look upon them as interpretive of that oath, which you must have taken as a judge, and by which " you are solemnly sworn to administer justice and right *indifferently* " to all men ;" I fear it would be impossible

sible to refrain from blushing for you in the former instance ; nor can I well forbear heaving a sigh for my poor native country in the latter. Mr. Carleton, you are now no longer a Judge of Oyer and Terminer.---Your short-lived phæntonic career is at an end.---There is nothing now of the terrific, either in your big looks, your insolent tone of voice, or the threatening clinching of your fist. The character of a judge sat ill upon you :---We know it was an assumed, and not your natural one. But that farce is now over :---the curtain is fallen, and you and I are once more upon a level, mere private individuals. Let us then, for a moment, calmly and dispassionately reason together, upon your late conduct towards me. I will ask you then a question.

Pray, Sir, after I had been sworn on the pannel of the grand-jury, and was actually sitting upon the business of the county, could any warrant signed by a
common

common justice of peace be *constitutionally* served upon me for any offence whatever, treason and felony perhaps excepted? Take care what you say. It is an ensnaring question. For if your answer be in the affirmative, then you must excuse me, if I say you are shamefully ignorant of the constitutional law of your country. If your answer be in the negative, then I ask by what authority did you dare, in that imperative tone, to command the sheriff to take me into custody, or even afterwards to bind me over to the keeping of the peace, which I had not broken? If you say, that you had not seen the warrant, and might therefore presume I had been charged in it with either treason or felony, my answer is, *De non apparentibus, et non existentibus, eadem est ratio.* Pray, was there any legal, apparent evidence before you, ascertaining that I stood actually charged with one or other of those crimes? Had you ever seen the warrant itself?—if not, all mystery, by what authority did you

you presume to order a gentleman of considerable landed property in the county, and one of the first families in the kingdom, to be committed to the custody of the sheriff, merely because you thought, you fancied, or, to speak in your professional language, you *humbly conceived*, he had been charged in, and by that identical warrant with treason or felony. Is this reasoning? Is it law? Is it justice?—For shame, Sir, do not pretend to say it is. A common justice of the peace in the country might have indeed entertained the vulgar notion, that his warrant is vested with such extensive powers that it may be legally served in a church, and even at the very altar itself. But you and I know a little better, or rather we know where to draw a line, and say with precision, Thus far, Master Justice of the Peace, shall thy warrant go, but no farther. It is a sound maxim, that *in generalibus latet error*.—So that when our country justices of the peace say, that their warrants may legally

be served upon any person, even in the metropolitan church, and that too in all cases of breach of the peace, their error lies in the little monosyllable **ALL**. For it would clearly be an infraction and violation of the very first article of Magna Charta, which runs in the following words:—"We have granted to **GOD**,
 "and by this our present charter have
 "confirmed for us and our heirs for ever,
 "that the Angelican Church shall be
 "free, and have all her rights and liberties entire and **INVIOABLE**." From this article Mr. Carleton, you and I, very clearly see the little, self-sufficient country justice of the peace, who talks so big and vainly of his pretended power, is totally ignorant of its true extent and boundaries.——For, to speak the truth, however humiliating it may be to his worship, his warrant cannot constitutionally be served upon any one of the king's subjects for trespasses and other small breaches of the peace during divine service, notwithstanding there may be
 here

here and there an impious, atheistical precedent in our law-books to the contrary. In this instance, Mr. Carleton, do you agree with me, that I have spoken the language of a sound, constitutional lawyer? I proposed this question to you with much covertness and subtlety. For if your answer be yes, as it unavoidably must be, then you have caught yourself in that very trap that was laid for you. If the warrant of a country justice of peace, say you, cannot be constitutionally served on any such small offender during church-service, will you say it may be constitutionally served upon a grand-jury man, sworn upon the pannel and actually sitting on the service of his county?—Change but the name of a country justice of the peace to that of a justice of a county assize, and then you will find, that

~~mutato nomine, de te~~

~~Fabula narratur~~

There is really no difference between the two cases. The first case is condemned, as anti-constitutional, by the treaty of Magna Charta ; the second, by the treaty of William the Bastard, vulgarly called " the common law." And if Magna Charta is not to be broken, how much more so, the Common Law? They neither of them are simple statutes or acts of parliament, made upon some instantaneous spirit, and repealable *ad libitum*. On the contrary, they are two treaties entered into, ratified, and confirmed by and between the king and the people, at two different periods of time, and equally binding to each of the high-contracting parties. They are both of equal weight, and of equal authority, and if inter pares there can be any preference or precedence shewn, most certainly it is due to the common law, because it is precedent in point of time; and it is a received maxim, that *cæteris paribus, id quod prius est tempore potius est jure*. Let me then ask you another question :

Question: Do you, Sir, understand the Saxon language? The reason why I put this question is, because you most probably know that the laws of Edward the Confessor (which, for their antiquity, justice, and equity, were declared to be the basis of the treaty of William the Bastard) were promulgated in the Saxon tongue. If you then understand that language, I may, without incurring the imputation of being deemed a pedant, transcribe one of the laws from that code in its original purity, simplicity, and conciseness. It runs in the following words:

i. e. 7ille þ ale man 77 37þer þýþe togemote 7 fram
gemote buton he 17 æbeþ þeof.

which in modern English may be thus translated: "I will that each man who is *at*, or is coming *from*, the county affizes, shall be free from all arrests and captions, unless he be an *open thief*." So that this law, seeing it is specially declared and established in favour of the liberty of the subject and is

part of our common law, it follows of course that it cannot possibly be annulled, abrogated, or set aside, by any act of parliament whatever, by reason that an act of parliament is not of so great authority as a treaty is : because the latter is always governed by the laws of nations, and not by the municipal laws of any country whatever, much less is it to be governed by any precedents which may have been smuggled into our law-books, or be overruled by any autocratic practice of our courts of record. So that you now plainly see, Mr. Carleton, I was clearly, under the protection of the fundamental, irrepealable law above-transcribed ; and whilst I was so under the wide-spreading wing of that covering cherub, it is indisputably clear I was intitled to a full and absolute immunity from all arrests or commitments of my person to the custody of the sheriff, or any other of his majesty's officers in the kingdom. The inference I shall draw from these premises is simply

simply

simply this :—" If the *written* warrant
 " issued by Ned Jordan was a daring
 " breach of the very treaty of peace it
 " self above-mentioned, and for which
 " if he had his deserts his name ought to
 " be stricken out of the commission of
 " peace; what punishment, what dis-
 " grace, or degradation, may not govern-
 " ment justly inflict upon you, Sir, for
 " presuming to issue that *verbal* warrant
 " to commit me?" But I am growing
 warm, and these transitory commenta-
 ries upon your conduct were only intend-
 ed as a friendly conference or private con-
 sultation between our noble selves.----I
 will therefore put an end to it in the
 Laconic remark of St. James, and say
 with the Apostle,

*" Brother Carleton, these things ought not
 so to be."*

But let us now resume the thread of
 this narrative, and take another peep or
 two into this curious examination of
 Mr.

Mr. Charles Lionel Fitzgerald: In pages 175 and 176 of this Appeal, this examinant, who does not seem to be of an oversqueamish conscience, having been duly sworn upon the holy Evangelists, deposes, "That finding upon several applications by him to Thomas Bucknel Lindsay and Arthur Lindsay, Esqrs. *for the enlargement of his father*, that he could not procure the same; he had the *situation* of his said father *represented* to the courts in Dublin, to see if any mode could be adopted for obtaining *his liberty*, but finding the same ineffectual, on account of the armed force with which the said George Robert Fitzgerald (the son) *had confirmed* said George Robert Fitzgerald (the father), and that the orders of the court were ineffectual, the same was accordingly represented to government, who ordered Examinant military aid, so as to obtain *the liberty and freedom* of Examinant's father."

My

My judges, to whom I submit this Appeal, will perceive that the examinant rests this part of his affidavit upon four distinct points. *First*, his ineffectual application to the Mr. Lyndsays, and in order to mistate and misrepresent the real truth, he plumply swears in page 175, " that George Robert Fitzgerald finding that the said George, his father, was determined to quit him, told the said LYNDSAYS and examinant's father, that he was determined he should not go, and that they might therefore make themselves easy on that head; on which the Lyndsays told said George Robert Fitzgerald, that they would represent this affair, as it happened, to Mr. Charles Lionel Fitzgerald, and also to the public."

Certain as I am, that I had never entertained any such ideas, and that I had never made use of any such expressions to the Mr. Lyndsays, or to either of them, I dispatched a letter to Mr. Arthur Lyndsay,

say, in, which I requested he would candidly declare whether I had ever told him in positive words, or had ever given the least hint, by which he could understand, that I was determined not to let my father go from me. To this letter I received the following answer.

T O

MR. GEO. ROB. FITZGERALD.

DEAR SIR,

I HAD the honour of receiving a letter from you by Mr. Fenton, where you wish to know, whether I made use of the following words when Mr. Lyndsay and I waited on you at Rockfield :—
 “ That you were determined not to let your father go, and that Mr. Lyndsay and I might make ourselves easy ; on which I told you I would make this extraordinary conduct known both to Mr.

C. L.

C. L. Fitzgerald and to the world." I must therefore tell you, I never made use of any such expressions, nor could I, as I never heard you mention them.

I am, Dear Sir,

Your most obedient,
and most humble Servant,

ARTHUR LYND SAY.

ST. ANDREWS, Decem, 21st, 1781.

HERE then is a flat contradiction given by Mr. Lyndsay himself to the positive oath of Mr. Charles Lionel Fitzgerald. Mr. Lyndsay, without any equivocation, or the least ambiguity of expression, asserts, that he never told him I was determined not to let my father quit my house : nay, more, he asserts that he could not tell him so, because I never mentioned any such thing to him.

Let us now come to the *second* point ;
and here Mr. Charles Lionel Fitzgerald

is

is pleased to depose upon oath, " that
 " he had the situation of his father re-
 " *presented* to the courts in Dublin, to
 " see if any mode could be adopted for
 " obtaining his liberty, and that his ap-
 " plication had proved ineffectual." But
 he neither mentions the date when this
 supposed representation was made, nor
 the particular court or courts to whom
 it was addressed. If he alludes indeed
 to the writ *de homine replegiando* which
 he had sued out against me, then his re-
 presentation must have proved ineffectual,
 not on account of any pretended armed
 force, but through the consciousness of
 his own inability to prosecute that writ
 to effect. The real truth is, as I am in-
 formed, that his suggestion of an armed
 force was so loosely worded, and also be-
 ing only grounded upon hearsay, that no
 action would lye upon so vague and idle
 a report, consequently the courts of Dub-
 lin could take no cognisance of it.

As

As to the *third* point, namely, that I had confined my father, so as to make the obtainment of his freedom and liberty impracticable without military aid, I apprehend this charge hath already been clearly refuted in no less than six different vouchers.——But there is one voucher which I reserved for this place, *pour faire bonne Bouche*; it is my father's own affidavit, against which, were he now living, he could make no averment in any court of justice.

I say, *now living*, because within these few days he hath paid that debt to nature, which one time or other all mankind must pay. It is fitting my judges should know, that before this event happened, my Appeal to the Public had been worked off from the press, I mean only so far as to page 168; and the principal reason why I did not insert this affidavit amongst the six other vouchers, is, that I kept it as a *corps de reserve*, in case of my being attacked in the common-law courts

courts on the score of damages. But any action of that kind being now inadmissible, I have no longer any reasons for withholding it from the public; and it is a duty I owe to my family, as well as to my own much injured character, to make it as public as possible, in order to convince even Mr. Charles Lionel Fitzgerald; that there may be (and actually is) one case, where, though a verdict may have been found against the party accused, yet such verdict doth not necessarily and absolutely imply, that such party was undeniably and irrefragably guilty of the offence charged and found against him.

That Mr. Charles Lionel Fitzgerald may not entertain the least suspicion of this affidavit's having been fabricated since my father's death, I think proper to remind him, that on the day of my trial it was perused by his own counsel, Richard Martin, that I shewed it to several gentlemen on the grand-jury, and
that

that it was read by the deputy-clerk of the crown. There cannot then be any doubts of its authenticity ; so with this short, but elucidating preface, I lay before the public

T H E

A F F I D A V I T

O F

GEORGE FITZGERALD, Esq.

(A S T A M P.)

County of Mayo, } GEORGE FITZGERALD,
to wit. } of Turlough, Esq; in
 said county, came this day before me,
 and made oath on the Holy Evangelists,
 that he has been informed *an affidavit*
 was made, setting forth, that he was con-
 fined a close prisoner in the house of
 Rockfield, and that said affidavit was
 made

made with an intent to procure an order for the army to come to said house of Rockfield, and there to force Deponent out, and, as they pretend, to set him at liberty. Now this Deponent declares, he is not confined, nor is he a prisoner at Rockfield, or elsewhere, but he (this Deponent) is at full liberty to go or stay about his lawful occasions, just as he thinks proper :——And this Deponent thinks it but just to declare to the world, that all *such affidavits*, advertisements, and reports, are malicious and false, only calculated by his UNFORTUNATE SON, CHARLES LIONEL FITZGERALD, and other evil-minded people, with an intent to injure, in the eyes of the public, the character of his eldest son and HEIR, George Robert Fitzgerald, and to prevent any counsel, learned in the law, from drawing any papers or deeds, whereby this Deponent could make over any property which he is possessed of to his said beloved eldest son, George Robert Fitzgerald :——And this Deponent verily believes,

lieves, that the intent of bringing the army to the house of Rockfield is only calculated to have an opportunity of bringing an armed mob of desperate people, and while the army attack the front of the house the armed mob would get into the back part of the house, and therein search for Deponent's eldest son, Geo. Rob. Fitzgerald, whom they would fire at, or otherwise murder.---And Deponent verily believes, when the said Geo. Robert Fitzgerald was put out of the way, Deponent would then be really confined, and forced by said Charles Lionel Fitzgerald to sign some deeds, which Deponent has already refused to do, in the month of March, 1781, when solicited so to do by this Deponent's *unfortunate* son, Charles Lionel Fitzgerald, in company with Ignatius Brown and Patrick Randle M'Donnell, gentlemen attorneys; and this Deponent has since heard, and verily believes, that said deeds were prepared and drawn in Dublin, and by one of said parties, and brought down

to said county of Mayo; and this Deponent verily believes, said deeds were to convey and make over the use of life, with all reversions of this Deponent's estates, to his said *unfortunate* younger son, Charles Lionel Fitzgerald, for a small stipend for this Deponent's life; and this Deponent verily believes, they intended to make him (this Deponent) drunk, in order to execute their wicked deeds; but finding that impracticable, they had recourse to falsehood's relative to this Deponent's eldest son, George Robert Fitzgerald, and threatened, that if Deponent did not comply with said unreasonable and wicked demands of making over said estates as aforesaid, that said Charles Lionel Fitzgerald would quit this Deponent, and make the best bargain he could for himself, with Deponent's son George Robert Fitzgerald; and that accordingly said Charles Lionel Fitzgerald did then leave this Deponent, and in a great passion did declare, he would ruin this Deponent and his interest;

rest for ever;—this Deponent finding himself treated in such a manner by said Charles Lionel Fitzgerald, and that he (this Deponent) had been by him deceived and misled to do many things, which he (this Deponent) is now very sorry for, against his (this Deponent) eldest son, George Robert Fitzgerald;—this Deponent then sent his trusty friend and manager, John Fitzgerald, with a message to the said George Robert Fitzgerald, setting forth his wish to have all disputes and controversies adjusted and settled; and for which purpose he (this Deponent) desired his son, the said Geo. Rob. Fitzgerald, would meet him, which said George Robert Fitzgerald accordingly did, and all matters were afterwards adjusted and settled.—This Deponent further saith, that from the evil-minded disposition of the said Charles Lionel Fitzgerald, this Deponent is well convinced and assured that said Charles Lionel Fitzgerald, or some person employed

by him, will waylay and murder the said George Robert Fitzgerald, unless prevented by some legal authority.—And further, this Deponent faith not.

(Signed) GEORGE FITZGERALD.

Sworn before me, one of his Majesty's Justices of the Peace for said County, this fourth day of September, 1781.

ALEX. O'MALEY.

(A TRUE COPY.)

MY judges will particularly observe, that this affidavit was sworn on Tuesday, Sept. 4th, 1781, and that Mr. Charles Lionel Fitzgerald's deposition bears date Saturday the 8th of same month; so that here are two affidavits directly contrary the one to the other, and I trust it will be remarked, that in my father's affidavit the charges are clear in point of lucidity,
positive

positive as to matter of fact, and ascertained of his own certain knowledge.--- In that of Mr. Charles Lionel Fitzgerald we hear of little more than what he had been informed of from others, or what he believed his-self, without any just foundation for such belief.---Besides, in comparing this affidavit of my father's with that of *his trusty friend and manager, John Fitzgerald*, inserted at large in this Appeal, see pag. 100, 101, 102, 103, it will appear, that this affidavit of my father's was not made upon a sudden spirit, but that it was in consequence of a reconciliation made between us, so late back as the 30th of March, 1781; and by the following letter written and signed by us both, and as such accordingly sent to the high-sheriff of the county of Mayo, on the 29th of April, 1781, it will further appear, that the most perfect harmony subsisted between us at that time also.

TO THE
HIGH SHERIFF OF THE COUNTY
OF MAYO.

S I R,

WE understand some officious person, wishing to continue disunion in our family, have applied for your assistance to execute some attachment against one of us at the suit of the other. Now we do inform you, that all law-suits and disputes that formerly subsisted between us are at an end; and we do caution you, and any person, who wantonly and unnecessarily interfered, at your or their perils, not to attempt executing any such attachments, which, in reality, do not exist.

Given under our hands, this 29th
of April, 1781.

GEORGE FITZGERALD.

ROBERT FITZGERALD.

Present, JOHN FITZGERALD.

(4 TRUE COPY).

WITH

WITH respect to the *fourth* and last point, I mean Mr. Charles Lionel Fitzgerald's deposing on oath, that a military aid had become necessary for the enlargement of my father; because, I had, as *he swears*, collected an armed force of about two or three hundred in number, and that I, together with this armed force, were employing ourselves in procuring cannon, erecting batteries, and cutting trenches, so as to make it impossible to enter the same, or to search for my father. This point, I apprehend, is clearly answered in my father's affidavit, in which he deposes, that Mr. Charles Lionel Fitzgerald's idly and falsely suggesting that the assistance of the military power had become necessary, was calculated only to form a pretence for bringing the crown-army to Rockfield-lodge, to the intent that whilst that army should approach the front of my house, he himself with an armed mob of desperate people entirely at his devotion, might, in the confusion, force their way into the back

part of my dwelling-house, where they might fire upon me, or otherwise put me to death, without the possibility of bringing home the charge of murder against any particular person or persons.

Part of this lying deposition having been refuted by your father's deposition, give me leave, Mr. Charles Lionel Fitzgerald, to put a few interrogations to you.——Pray, Sir, as you seem not to speak with precision, in regard to the number of this same *armed force*, which, in the former part of your affidavit, you call a “*dangerous, wicked, armed mob*,” and you have led the public somewhat in the dark, whether the number was three hundred or two hundred, or any immediate number between three and two hundred; will you be so good as to ascertain whether that number was even one hundred, or, Sir, are you clear it was fifty, or, in short, would not your own conscience tell you, that you must be a *perjured man*, (as Lady Mary, your own
mother

another hath called you, upon another occasion) were you to swear that this same *armed force* exceeded the number of twenty. And pray, good Master Affidavit-maker, who were this same armed force, that you describe as if in the very overt-acts of rebellion; such, for instance, as procuring cannon, erecting batteries, and cutting trenches? Were they a band of lawless banditti, a desperate gang of white-boys, houghers, thieves, rogues, murderers, or assassins? Sir, you know the contrary. You know, Sir, they were respectable freeholders of the county of Mayo;—you know they were a small detachment from the Castlebar and Turlough Volunteers, that were, as usual, performing their manual exercise in my presence, as their colonel, and that they were only sixteen in number. Is this a compliment to pay the Volunteers of Ireland? Certainly, Sir, they are an *armed force*; but will you now, on your positive oath, declare they were employed in the rebellious acts of procuring
cannon,

cannon, erecting batteries, or cutting trenches? If in procuring cannon, pray did you count the number of those cannon, their calibre, or the condition they were in? Sir, you know, they were only six in number; and should any colonel, who hath the command of three companies of volunteers, have a lesser number? So that if you would insinuate, that the three companies of volunteers under my command, were acting as rebels and traitors to their king, because I had purchased for them six pieces of cannon, you shew your native country the real drift, intent, and meaning of this your affidavit. It was not merely to represent me, a private individual, as in the act of incipient rebellion; it was through my fides that you secretly intended to wound and calumniate the fair and immortal character of the whole body of volunteers in general. If this were not your intention, how are the public to account for this vague, loose manner in which you charge the volunteers with the

the

the hostile act of erecting batteries?—
 This sure is a new species of affidavit
 making—a new mode of intelligence.
 You tell the public, that I and the volun-
 teers are employed in erecting batteries,
 but you swear neither to timety nor to
 locality; the time *when*, and the place
where, having no existence but in your
 own wicked invention and malignant
 imagination, are left to the moon-shine
 finding of the grand-jury, the oracular ver-
 dict of the petit-jury, and to the fertile
 ingenuity of the criminal judge. Is your
 pencil one hair's breadth more accurate
 in the description of these same trenches,
 in cutting of which you swear, that I
 and my volunteers are so busily employ-
 ed? You neither mention in what degree
 of forwardness this work is, nor when it
 is likely to be finished, nor whether it be
 situated on a height, or whether it be
 defended by a morass, a river, or a wood?
 I will kindly help you out, both with re-
 spect to the batteries and trenches. The
 batteries

batteries, Sir, were not erected either by me or by my volunteers.—These batteries, Sir, as you in your Don Quixote ideas are pleased to imagine and represent them, are a small mount about twelve yards square; it was built in the year 982, just 800 years ago, by Anlaff the Great, whose son (Sytherick) in our Irish annals is entitled “*the King of Dublin* ;” and as this Anlaff was one of our Danish sovereigns, this mount is called to this day a Danish Mount. In the centre of this small square is a pigeon-house, defended, or rather occupied, by two or three pairs of pigeons. Mr. Charles Lionel Fitzgerald made a slight mistake when he used the military technical term of *trenches* :—For instead of trenches, there is nothing but a little loofish earth thrown up, in the form of a mount; and this mount, thus fortified with an old tumble-down pigeon-house and a few invalid pigeons, and which itself is commanded by a neighbouring and much more elevated ground, really and *bonâ fide*

fide constitutes the whole of these batteries and entrenchments, which, in Mr. Charles Lionel Fitzgerald's affidavit, appear so tremendously hostile and impregnable, *as to make it impossible to enter the same.*

My good Lord of Carlisle, who, during his very short vice-regency in this kingdom, knew as little of the western parts of this island, as he did of Mr. Charles Lionel Fitzgerald's character for veracity, was easily induced to believe that every Danish mount, of which there are thousands in this country, must be a place of great strength and force, forgetting, perhaps, that these Danish forts were erected at a time when the principal weapons of offence were the bow and the arrow. Apprized of his Lordship's knowledge of the *Charte du pays*, and having gained intelligence that representations had been made to his Excellency, setting forth, that I was actually fortifying a very strong hold at Rockfield, in
such

such a manner as to be a terror to the king's people ; I wrote a letter to his Lordship, assuring him of the contrary, requesting that if any information upon oath or otherwise should be sent to the Castle, purporting any such false alarm, his Lordship would be pleased to order such information to be notified to me with all convenient dispatch ; on receipt of which I would instantly set off for Dublin, and lay before his Lordship a true state of facts. To this letter I received an answer from Mr. Secretary Eden, giving me to understand, that no information of that kind had been sent to his Excellency, with assurance that on any such information's being officially communicated to the Castle, I should have the earliest intelligence of it. On this assurance I relied implicitly. I paid the same respect to it, as I should have done to his Lordship's word of honour, or to that of the Right Hon. Secretary : and I have only to say, that either his Lordship or his Secretary, or both the one and the

the

the other, did not keep their word with me.—For within six or seven weeks after the receipt of the above-mentioned letter from Mr. Secretary Eden, when I imagined that all was peace and quiet at the Castle, and that no hostile attacks were to be made from that quarter, at least without a previous notice: behold! on a sudden, various reports were brought to me, all announcing one and the same article of intelligence; namely, that five or six companies of infantry, with two troops of light-horse, and a long train of artillery, were actually on their march towards Rockfield-lodge, under positive orders from government to storm my pigeon-house, dismantle my Danish mount, dislodge all my poor pigeons, and to take me prisoner alive or dead.

Confiding, as I did, in the joint and separate word of honour given by his Excellency and Mr. Eden, and convinced in my own breast, that I had committed no
act

act whatever that ought to have given the least umbrage to government, it was with difficulty I could persuade myself into a belief, that his Excellency could possibly suffer himself to be so far imposed upon, as to put the nation to so enormous an expence without any real foundation, certain information, or any colour of public justice or private honour for so doing. The public rumour however was but too true, and in spite of an almost insurmountable propensity on my part not to believe it, I was at last compelled, indeed, in my own defence, to give credit to it. On this unexpected, and, I may justly say, unmerited treatment from government, the first step I took was, to write to the commanding officer to whom the execution of this truly risible expedition, I understood, had been entrusted. Accordingly I dispatched the following letter to Major Pomroy.

TO

T O

MAJOR POMEROY,

NINTH DRAGOONS.

S I R,

I AM informed there is an order from government issued, and come down to you, directing the army under your command to repair to Rockfield, and there release my father from bondage. When the troops arrive, my father will (I make no doubt) convince them, they are in an error, and that they seek a freeman, not a slave.

My place is represented a place of force :---if a few spirited volunteers and some cannon can make it so, it is. But then let it be observed, my intent (by that small force) is to protect my life and
P property

property from the lawless attacks of individuals, not to oppose his Majesty's arms, or the laws of my country,—both which I shall ever think it my duty to support, as far as is in my power ; and if ever an attack should be made on either, by a foreign enemy, I am convinced his Majesty has not subjects who will act with more firmness and alacrity, in support of his crown and dignity, than the volunteers under the command of,

S I R,

Your most obedient,

and most humble Servant, .

R. FITZGERALD.

THE answer Major Pomeroy sent me to this letter hath been lost or mislaid : but the substance of it, as well as I recollect at present was, that the orders which he had received from government were *positive*, and that he could not possibly mistake

mistake them. There were likewise in it some compliments to me, which are not material to be now mentioned. But in the month of November, having understood from various quarters, that my character had been traduced in the most scandalous manner, and that my peaceable deportment in the harmless exercising of the volunteers under my command, had been grossly mistated to government, and that I and my volunteers had been represented to his Excellency the Earl of Carlisle, "as a dangerous, wicked, armed mob," determined to oppose all legal government, and to resist the king's troops; I wrote a second letter to Major Pomeroy, a copy of which I now lay before the public.

T O

M A J O R P O M E R O Y,

N I N T H D R A G O O N S.

S I R,

I HOPE my present situation will sufficiently apologize for giving you the trouble to answer the questions annexed. They are of great consequence to me, and will, in some measure, clear in the eyes of the public a much injured character.

Did you receive any orders from government to attend the sheriff of the county of Mayo to Rockfield-lodge? Were those orders delivered to you by the sheriff or sub-sheriff of said county; and if not by either of them, by whom?—What passed in consequence of receiving such orders between you and him who delivered such orders?

orders?—What return did you make to government?—Do you believe in consequence of a report that was circulated in the county of Mayo, relative to the return you made to government; I say, is it your belief, in consequence of that report, that I really could have any the least intention of resisting his Majesty's arms?—Did you get Mr. Bullingbrook's letter from him; and if so, what was the purport of both such letters?—Did any of his Majesty's men under your command go with the sheriff to Rockfield?—Did his Majesty's troops under your command meet with the least disrespect from me, or any person belonging to me?

I am, Dear Sir,

Your most obedient,

and most humble Servant,

R. FITZGERALD.

TO

ROBERT FITZGERALD, Esq.

SIR,

I RECEIVED your letter, dated the 27th of last month, this day. The orders from government to give a party to attend the sheriff or sub-sheriff of the county of Mayo to Rockfield-lodge, were brought to me by Mr. Charles Fitzgerald, who told me, on delivering them, that the sub-sheriff was then ready to take the command of the party.

I acquainted Mr. Charles Fitzgerald, that as cannon was mounted at Rockfield on a regular platform, and other preparations made there for defence, and as it was the current report of the country, that a considerable resistance would probably be made, I thought it my duty to make a report to government, which I did

did immediately by express to Mr. Secretary Eden nearly in words I have now wrote, and exactly to the purport of them. I received a letter from you some days after. Mr. Bullingbrook received one from you at the same time, and shewed it to me. It contained some polite expressions relative to me, for which reason I desired Mr. Bullingbrook to permit me to keep it. He did. I am sorry I have mislaid it: but I recollect a part of it perfectly,---“that you intended to show every respect to his Majesty's troops, when they would come to Rockfield; and you said, you expected that I would not suffer any *other* person to come to Rockfield: for, if such person should commit any outrage, you could not answer for the consequences that might happen. The letter you wrote to me at the same time is now on my table, and if you desire that I shall send you a copy of it, I will.

In answer to the last query, I am happy to say, that your behaviour to me and the troops under my command was friendly and attentively obliging, and I never heard that any disrespect was shown to them by any person belonging to you. I have the honour to be,

S I R,

Your most obedient

humble Servant,

ARTHUR J. POMEROY,

Major IX. Dragoons.

CHARLEVILLE, Nov. 6th, 1781.

AS there are some expressions in Major Pomeroy's answer to my second letter, which suggested to me an idea that he might possibly have made an unfavourable report of me to government, I thought it necessary to request of him an éclaircissement under his own hand-writing, and on this head I wrote him another short letter, and received the following answer.

TO

T O

GEORGE FITZGERALD, Esq.

S I R,

I RECEIVED this day your letter, dated the 18th instant. I enclose you the letter I had the honour to receive from you at Castlebar.

I made no other report, nor had I any other correspondence with government relative to you, except the letter I wrote to Mr. Eden, in consequence of the order for the military under my command to attend the sub-sheriff at Rockfield.

That letter is dated August the 28th, and does not suggest any idea but what I have mentioned in my letter of the 6th of November.

I am, Sir,

Your most humble Servant,

A. J. POMEROY.

CHARLEVILLE, Dec, 21st, 1781.

AS

AS I did not, nor do at present, think the two answers I received from Major Pomeroy sufficiently explicit, I therefore wrote the following letter to Mr. Bullingbrook, and at the same time sent off a copy of it to Mr. Hall.

T O

MR. JOHN BULLINGBROKE.

DEAR SIR,

I HOPE you will excuse my being under the necessity of requesting your answer to the following queries, which I should not take the liberty to do, had not Major Pomeroy lost or mislaid the letter I had the honour of writing to you.

Q U E R Y I.

WHAT were the contents of that letter, to the best of your recollection; and
in

in particular, did you understand that any the least opposition would be made to the sheriff and the military, or either of them, in case they should come to Rockfield ?

Q U E R Y II.

HAD you any, or what conversation, with Major Pomeroy on that head, or did the Major put any, or what construction upon the particular wording of my letter, and if your opinion did not at first coincide with his, were you afterwards both of one and the same opinion.

Q U E R Y III.

IF Major Pomeroy had any doubts about the meaning of any part of my letter, did you recommend it to him to send to Rockfield (which was scarcely more than six miles distant) for a clearer explanation of my letter?

Q U E R Y

Q U E R Y IV.

DID it not appear to you to be the true meaning of my letter, that it was my request to Major Pomeroy that he would not suffer the mob of Mr. Charles Lionel Fitzgerald, and that of Mr. Cæsar French, to accompany the sheriff and the military to Rockfield ?

Q U E R Y V.

DID I not give my reason for writing, that the two mobs aforesaid might not be permitted to come to Rockfield, least, under the sanction of the sheriff and military, they might commit every species of outrage and violence against my property and my life ; and that if such outrage and violence should be commenced by the said two mobs, I could not be answerable for the mischief that might ensue ?

I beg you will be as explicit as possible, as to all that passed between you
and

and Major Pomeroy on this occasion.
I have the honour to be,

Dear Sir,

Your most obedient,

and most humble Servant,

R. FITZGERALD.

December 27th, 1781.

T O

GEO. ROB. FITZGERALD, Esq.

DEAR SIR,

I RECEIVED the honour of your letter this day ;—did receive a letter from you last summer at Old Castle : to the best of my recollection its contents were, to satisfy and inform Major Pomeroy, that every attention should be shewn to him and the military when called upon to attend the sheriff, and to recommend it to him to prevent any people joining him ;

him ; by which I understood you meant any party of Mr. Charles Fitzgerald's, or Mr. Cæsar French's ; and, to the best of my recollection, the Major said he would, as I in the best manner I could, explained and informed him of the variance between Mr. French, Mr. Fitzgerald, and you ; and that you mentioned in your letter, that if such came, you could not answer for the consequence ; which letter I gave Major Pomeroy at his request, and it appeared totally to clear you of the smallest disrespect or opposition to either the military or government.

I have the honour to be,

S I R,

Your most obedient,

humble Servant,

JOHN BULLINBROOK.

December 28th, 1781.

TO

T O

GEO. ROB. FITZGERALD, Esq.

DEAR SIR,

I HAVE just received the favour of your letter ;---was at Old Castle when two letters of yours arrived, one to Major Pomeroy, and one to Mr. Bullingbrooke (last Summer); they appeared to me, and, in my opinion, must to every one, that your intention was to shew every respect to the sheriff and military, or either of them.----We had different conversations relative to your affairs; and I never heard you *suspected* of an opposition to any person (Mr. Charles Fitzgerald and Mr. Cæsar French excepted); I also understood your letter to Mr. Bullingbrook was to convince him and the Major, that you wished and intended every respect and attention to government

ment and the military ; and to request he would come *unattended*, in my opinion, could convey no other construction or meaning, than not to allow Mr. Charles Fitzgerald or Mr. Cæsar French's people to accompany the military, as your letter mentioned you could not then answer the consequences.

I have the honour to be,

Dear Sir,

Your most obedient

humble Servant,

EDWARD HALL.

December 27th, 1781.

BEFORE I dismiss this article of cannons, batteries, and entrenchments, I cannot, with justice to myself, refrain from remarking, that the language Major Pomeroy uses in his letter to me, may possibly not appear perfectly exculpatory of my conduct in the eyes of the generality of my readers. For the Major doth
not

not to give a direct answer to my queries ; on the contrary, he talks of a regular platform, and cannon erected on that platform. Now I apprehend, that a platform in the obvious acceptation of that word means a level place before a fortification. If the Major intended to have conveyed any other idea, it is pity he did not explain himself a little more intelligibly : but if that were his meaning, then most certainly he hath conveyed an idea very distant from the real truth. For the real truth is, and the Major is, I hope, too much of the man of strict honour to deny it, that there is no fortification on or within five miles of the spot he mentions. And if no fortification, then the word *platform* is highly improper, as it conveys an idea of a place regularly fortified, more especially when it is accompanied with the erection of cannon upon it. But as I am certain, Major Pomeroy saw no edifice there which can be tortured, so as to imply any thing like a regular fortification, or

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any

any thing like a spot of ground on which a person acquainted even with the first rudiments of the military science, would erect his cannon, I trust the Major will give a clear explicit answer to the following queries.

Q U E R Y I.

DID you, or any other officer under your command, see any such place or Danish-mount in the neighbourhood of my country-seat, as a military man would not blush to call a *fortification*?

Q U E R Y II.

WITH respect to the place here alluded to, is it not so situated that any lieutenant of the artillery corps might safely undertake to make himself master of, with fifty men with their small arms only, had it even been defended by me with my six pieces of cannon?

Q U E R Y

Q U E R Y I I I .

Do you think that matters must not have been grossly misrepresented to government, or if not grossly misrepresented, do you think that government were justified in sending so great a body of infantry and cavalry, together with such an *expensive* train of artillery, against such a place, where no opposition was or could be intended?

Q U E R Y I V .

THE letter which I wrote to you for the special purpose of your transmitting it to the Castle, did you transmit it either to His *then* Excellency the Lord Lieutenant, or to Mr. Secretary Eden, and what were the specific contents of that letter, and what the specific answer to it?

TO these four Queries I expect a dilucid, unequivocal answer, and I now publicly call upon you, Sir, for such an-

swer. This matter, Sir, must be satisfactorily cleared-up to the public. During the late vice-regency of Lord Carlisle, when the whole nation, and the Volunteers in particular, felt the severe hand of oppression, I prudently forebore to bring my private grievances on the public theatre. I fought not to inflame; and I made it the rule of my actions, not to embarrass government. But now, Sir, as all is quiet, and we experience the blessing of being governed by a viceroy,

Animo maturus et Ævo,

Neither you nor I, Major Pomeroy, can have any reason for withholding the truth from the public. Having acted in my private station irreproachably, at least to my own conscience, I have nothing to fear: and you, in your official character, having acted (I trust) as became an officer and gentleman, you can have nothing to dread on your part. We are both certain to meet with equal justice, under the present

sent vice-gerency,—a vice-gerency which, at the same time, that it gives a pride and heart-felt satisfaction to every native Irishman, cannot fail to transmit to our latest posterity, the illustrious name of PORTLAND, as the most distinguished blessing ever conferred on this island by the hand of Providence.-----Under such a vice-gerency, Major Pomeroy will boldly and candidly speak the truth, and not necessitate me to have recourse to a court-martial, either for the vindication of his own honour, or for the justification of my own much, very much, injured character.

These circumstances I thought proper to bring forward, in order to convince even Mr. Charles Lionel Fitzgerald himself, that the various advertisements and paragraphs in the public prints, fabricated as they were under his direction, or by that of an *un*-reverend Dean, his grandfather-in-law, have not always spoken the language of truth ; and that it doth not by any means follow, that I must

have been guilty of the several charges brought against me by Mr. Charles Lionel Fitzgerald, merely because a verdict hath been found against me. For it is well known, that Hugh Carleton, the judge, directed the jury to find, not on any real positive truth, but upon the general report and *hearsay* of the county, as in its due place will be made more fully to appear. In the mean time, let us return, and *eye* the farther conduct of this same Juvenile-judge at this very extraordinary trial.

It may be remembered, I have already dropped a hint, that the complexion of a court is sometimes very easily to be seen through at an early stage of the trial. It required, on my part, no great depth of penetration, nor any miraculous gift to foresee and foretell what would be the issue in this particular case of mine. For, what indulgence, lenity, or merey, could I reasonably expect in the county of Mayo, when a gentleman, between whose family

family and mine there had been, literally speaking, a *dagger-drawing* quarrel for upwards of forty years, was foreman of the grand-jury, and when a brother of that identical foreman was one of the judges associated to sit upon the bench together with Carleton. I beg to be distinctly understood. I do not mean, that either this foreman of the grand-jury or the associated judge would act in direct and barefaced contradiction to either of their consciences, or that they would glaringly *exceed* the boundaries of the law, so far as they had a competent knowledge of the law. But though they would not thus effronterily *exceed* the law, I am pretty clear they would go in any matter of this sort concerning me, as far as the law would permit; that is to say, I might expect *summum jus* at their hands; but neither more than less. If I had my reasons for being somewhat uneasy on account of this ominous, ill-foreboding opening of the court, certainly I had still

greater reason to be alarmed on the subsequent day: For the first news I learned that morning, was, that Mr. Carleton was gone to dine at Lord Altimont's that day, who is nephew both to the foreman of the grand-jury and also to the associated judge; but to mend the matter, is also the head of the Brown family. It is the custom throughout the whole province of Connaught, for the person who gives any public dinner always to push about the bottle, more especially when the *arbiter bibendi* hath some particular views upon any gentleman in the company. I do not say, this was really the case at Lord Altimont's that day; however, it is notoriously known, from one end of the county of Mayo to the other, that there is much ill-blood of very long standing between the Fitzgeralds and the Browns of that county. I leave it, therefore, to the public, to judge whether Lord Altimont's house was a proper place for Mr. Serjeant Brown and Mr. Carleton to dine at, knowing, in their consciences, they

they were both to sit in judgment upon me the very next day. Let us then suppose that this new-fashioned nobleman should have no objection, after supper, to a little party at cards. What a entertaining *parti quarre* must it then have been to the whole family of the Browns to see Lord Altimont, the nephew,—Mr. Serjeant Brown, the uncle the first,—Mr. George Brown, the uncle the second,—and Mr. Justice Carleton; all four laying their wise heads together, and perhaps my identical self the sole topic of their attic conversation. That it was so, I apprehend, there can be little or no doubt; otherwise, how came it to pass, that Mr. Justice Carleton, before he could well alight from his chaise the next morning in Castlebar, should rap out an unseemly oath, and swear by G-d, he would fine me in a thousand pounds to the King, and imprison me at least three years. This, sure, was rather the language of a man of violent prejudices and prepossessions, than of a merciful, impartial

tial judge; for as yet the grand-jury had not found the bill, much less had any verdict been given against me.—This gift of foresight, I always understood to have been confined to the Isle of Sky.—Intuitive knowledge is rarely given even to judges practised and hackneyed on the bench.—But for a judge who had never sat upon the bench before, and probably never may again, to possess all the parts of a trial, and that too before any of those parts can legally come before him, seems, in my poor opinion, to argue either certain supernatural abilities in the judge, or a pre-determined prejudication of the matter. It cannot be supposed that, upon my own knowledge, I advance this little anecdote of Mr. Judge Carleton's having been so unguarded as to suffer an oath to drop from his lips in so public a place, and on so public business: indeed I do not.—All that I know about it is, that it hath been attested to me by the voluntary affidavit of a person of credit, who was an auricular witness to the fact, as he informs

forms me. If it be false, I ask his pardon for inserting it here : or if Mr. Judge Carleton is habituated to vulgarise his common colloquy with an oath at almost every other word, in such case, his swearing an oath or two extraordinary on this occasion will carry with it no particular, bad intention in him, and therefore it should seem he rather merits ecclesiastical censure and correction, than any notice or unfavourable surmise on my part. It is sufficient for me, that I have thus previously informed the public, to whose candid judgment I appeal, that the foreman of the grand-jury was uncle to Lord Altimont, that the foreman of the petit-jury, who was to be the mouth-piece in pronouncing the verdict, was cousin to Lord Altimont ; that the associated judge was also another uncle to Lord Altimont ; and that the other judge who was to pronounce sentence upon me, had taken a journey of eight or ten miles to dine, sup, and lie at Lord Altimont's, the day before my trial was to come on ; notwithstanding
the

he knew of the hot blood that subsisted between mine and Lord Altimont's family. But let us see whether this hot blood carried any of the persons above-mentioned beyond the line of their duty through the several stages of my trial.— If it did not, certainly the greater praise is due to them. I leave facts to speak either *pro* or *con*.

In order then to state this part of my narrative with clearness and due order, I must observe, that it was three à-clock on the Monday before the grand-jury had found the bill against me, although I frequently urged them to begin upon it, and had as often experienced some evasive answer, and that the assizes finally ended on the day following. So that it was absolutely impossible for me, at so short a notice, to obtain the depositions of divers persons, which, had they been obtained, must unavoidably have impeached the credibility of Mr. Charles
Lionel

Lionel Fitzgerald's deposition, and have rendered his evidence, on which the whole prosecution was grounded, utterly inadmissible and void. The depositions already inserted in this Appeal, independent of others, of still a blacker cast if possible than any I now publish, would most undoubtedly have weighed with the grand jury, so as to have made it impossible for them to have found any bill grounded on his single testimony or evidence.—But the rapidity, the anti-constitutional rapidity, with which this prosecution was hurried through, from beginning to end, deprived me of the possibility of making such a defence as the magnitude of the charge required.—Required, I say, in a twofold sense; first, not by a bare exculpation, but by a full, clear, and honourable exoneration of myself from the pretended charge: and, secondly, by giving such indisputable proofs of the incredibility and inadmissibility of my accuser's testimony, as must have necessarily compelled the judge on the bench to have
instantly

instantly committed him for open and wilful perjury. Indeed, I was the less anxious on my being thus deprived of the possibility of doing this justice to myself, as my council had assured me the court certainly would, on motion, carry over my trial until the next assizes. But it seems my council, in this respect, deceived themselves, as well as me, and I was obliged to take my trial under all the disadvantages of non-preparation, and of a petit-jury, who were all rank Papists, not a single Protestant amongst them. But previous to my cause coming under the connisance of the petit, I ought to mention what occurred on its coming before the grand-jury.

Not to enter into minutiae, it may suffice to observe, That after some little pecking at one another, the battle-royal soon declared itself in favour of one side, (for nine out of ten were Lord Thomond's cocks), when two very insidious questions were put to me by the foreman, Mr.

George

George Brown ; the first was, " Whether I had any objection against my sending to Rockfield, and desiring my father to come in person to the grand-jury ; because if I had not, it would save the grand-jury, he said, much trouble ; and on my father's appearance, the bill must be returned *ignoramus*."——My answer was, " That I would immediately and most willingly write to my father, but as I had no controul over his person, and consequently could not command his attendance, I hoped they would put no unfavourable construction upon the letter I should send to him, in case he should not come." This answer, it seems, had no other effect, save that of producing another question from the chair, which was couched in the following words:—" You say, Sir, your father may possibly not pay obedience to any letter you yourself may send to him ; have you, then, any objection against *all* the grand-jury going to Rockfield, and to *their* bringing him into court ?" This question was infinitely
more

more ensnaring than the first.—For had I answered that, I must object to their going, they might have inferred that I really had imprisoned my father in my own house : on the contrary, had I answered, that I had no objection, and had they went all of them in a body together, as they had proposed to do, I very well knew my father would have fired the last round of bullets or swan-drops at them all, before he would have suffered himself to have been taken prisoner. I knew this determined resolution of my father's, not only from his own repeated declarations, but from experimental knowledge of his having carried his resolutions into execution on other occasions. I therefore thought it advisable to give Mr. George Brown the following answer ; namely, “ That I had no right to object to any proposition the grand-jury might be pleased to make me, but if the proposition was intended only to have my opinion upon it, I should take the freedom to say, that I should think it more advisable for two
or

or three of the grand-jury to go to my house, than all of them in one body. Most of the jury, I said, were no strangers to my father's resolute and outrageous manner of acting, where he imagined his person might be in danger of being taken into custody; that such a numerous body going to the house where he was, would certainly alarm him, more especially as there were several *green-waxes* out against him, which most of the jury very well-knew; and my father would defend himself by every offensive mode he could, before he would submit to be apprehended. For these reasons, with great deference to the better opinion and judgment of the grand-jury, I should propose, that two or three of the jury whom my father might not mistrust, and on whose honour he could rely, that they did not come to apprehend and charge him in execution, would answer their end much better, and much safer, than for all the grand-jury to go to him in a body.

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It was replied to this answer,—“ That no two or three gentlemen of the grand-jury could probably be found, who would venture to go to my father, knowing him to be so desperate as, by common report, at least, he was presumed to be.” But this difficulty was immediately removed, by several of the grand-jury voluntarily making an offer to go to my father, adding, “ that they did not in the least doubt, he would receive them and any *amicable* propositions they might make to him, either on the part of the grand-jury, or on the part of his son, Mr. George Robert Fitzgerald.”

On this fair and candid declaration of these gentlemen,—gentlemen, I say, unexceptionable in every respect, I concluded every thing had been settled and happily adjusted, as well to the mutual satisfaction of the grand-jury, as it was to myself. Accordingly I retired, not the least doubting but they would depute two or three of the grand-jury-men personally
to

to attend on my father at Rockfield-lodge ;—that after having an ocular demonstration that my father was actually living, in perfect health and high spirits, and obtaining from his own mouth a confession and justification of the truth, of his either being at liberty, or under some undue restraint or confinement, they might make a suitable report to the grand-jury on their return ; the whole of which embassy could not well have taken up more than two or three hours at the farthest. But how was I surprised, about three à-clock in the afternoon of the same day, to understand that the grand-jury, instead of appointing a deputation out of their own corps to have ocular and auricular evidence before them of the falsehood, malignity, and perjury of my accuser, they had, in my absence, found the bill a true bill. What could I possibly now do ? The trial of the issue in my cause would most probably come on the very next morning by ten à-clock, and the witnesses who could be of any essen-

trial service were in another county. In this embarrassing situation I determined to be governed by my council, who advised me to make an affidavit, setting forth, That three of my witnesses most essential to my cause, were actually in the county of Sligo, and that I could not go to trial without them. This affidavit was accordingly made : My council moved the court to put off the trial until next assizes, and had pre-assured me, that on this application to the bench, the court would not hesitate one moment to grant me the effect of my petition, which I was given to understand, was both a matter and a motion of course.

The candid public, I apprehend, will immediately conclude, that Mr. Carleton, the judge, could make no objection to this so reasonable a request. Quite the contrary. For Judge Carleton sees farther into a millstone than any man living. With one eye he shall see at three miles distance, that my father was imprisoned in my
house

house at Rockfield ; with the other, he shall as clearly and distinctly view my father actually murdered there, by me or by my direction. A judge thus illuminated, thus wrapt in a vision, so as to become entirely visionary himself, could not possibly think of listening to my application ; and my cause was accordingly ordered for trial on that day. Rouzed and awakened at his answer, I own, I fixed my eyes upon him, and stared the young man full in the face, and I wanted not the help of spectacles to foresee the event of my cause.---I, that instant, gave it up for lost ; and thought myself happy that I was no farther in his power than a common trespass *vi et armis*, as it falsely is called, had put me. Had my pretended offence come within the description of any breach of the peace a single note, or even half a note higher, might I not have had reason for applying to myself what Pope hath said of another judge, but thank God, in another reign :—

*“ Hard words, and hanging, if thy Judge
“ be PAGE.”*

Thus robbed of mine, and every other free subjects birth-right ; robbed, I say, of that benefit I was intitled to by the glorious bulwark of the realm, the common law of the land, it only remained for me to rely principally on the internal consciousness of my own innocence, and to trust to such other evidence as I might collect from such gentleman there at the assizes, who, upon occasional visits to me at my own house, had at different times been eye-witnesses to the honourable treatment and filial respect shewn by me to my father, and to his own free and easy deportment, chearfulness, and content of mind, during the continuance of his abode under my roof. Having thus put on the breast-plate of a guiltless conscience, and being girt with the spirit of truth, I entered the lists, to encounter and wrestle against spiritual wickedness, seated

seated on a bench somewhat higher than the place where I then stood.

It is the prerogative of the crown to *prærogare*, that is, to have the evidence for the crown examined before the evidence of the party accused. And this *jus prærogandi*, amongst the Romans, was always considered as an equivalent to two parts out of three in all the battles at their forum. For the party that had this right *first* to harangue an illiterate and weak audience, not unfrequently made such forcible prepossessions of such strong impressions *upon* their minds, as made it very difficult, if not next to impossible, for the *second* and adverse orator to erase, however just and righteous the cause he had to defend. This observation seems not totally unapplicable in the present case; and will appear in a stronger light, upon laying before the public, first, the evidence *ex parte coronæ*, and in the next place, those in behalf of the party prosecuted.

EVIDENCES FOR THE CROWN.

THE first evidence for the Crown, Bonney Garvey, Esq; a gentleman highly respectable for his landed-property in the county, and still more so on account of his public character—a man of the strictest veracity, unfulfilled honour and singular probity, being asked, Whether he had ever been at my house; whether he had seen my father there; and, whether he thought my father was any ways restrained of his liberty :—He deposed upon oath, that he had been at my house,—that he had seen my father there,—that my father walked out of the house by himself,—that there were no guards, nor appearance of any guards, either about my father's person, or about the house; and that, in his opinion, my father was a FREE man to all intents and purposes.

THE

THE second evidence † deposed, That he had been at Rockfield-lodge, by the direction of Mr. Charles Lionel Fitzgerald, in order to see Mr. Fitzgerald, the father, for the special purpose of knowing, whether he was confined.—That said George Robert Fitzgerald told him, (said Lyndsay) upon declaring his purpose, that he was very happy at his coming, as he would have an opportunity of seeing his father, and knowing from himself, whether he was confined or not.—Accordingly he shewed said Mr. Lyndsay into a drawing-room where said George Robert Fitzgerald's father was, who, immediately on seeing said Mr. Lyndsay, said, he was very unwell, and withdrew to his bed-chamber before the said Lyndsay could ask him any questions.—And the said Lyndsay then proposing to write a letter to said George, the father, to know whether he was confined or not; The said George Robert gave him pen, ink, and paper, to write, and he said he would

† Mr. Lyndsay.

would go in the mean time to try to bring his father down, or that he would bring the said Lyndsay up to him ; and that soon after he came down, accompanied by his said father, who seemed very angry, and declared he was confined ;— that George Robert seemed very much surprised at what his father had said, and shewed said Lyndsay a letter which his said father had written the day before, to a gentleman of the law, desiring him to come to him, in order to draw articles between him and the said George Robert, and adjust all matters of difference which subsisted between them before that time ; and, by his letter, cautioned the said gentleman that no person should be acquainted with it. And the said George Robert also informed his said father, that he was very much surprised at his behaviour ; and told him, as he then said he was under restraint, he begged he would leave his house directly, and rung a bell for his servant, and desired him to desire his said father's servant to get his carriage ready,

ready, and to bring it to the door, that Mr. Fitzgerald should go away. Then Mr. Lyndsay took his leave.

On his cross-examination, Mr. Lyndsay was asked, why Mr. Fitzgerald, the father, did not go at that time; he said, he did not know, and whether he might have changed his mind, he might, for what he knew. He was asked, whether Mr. Fitzgerald, the father, was not a man of a very changeable disposition; he said, he did not know him personally, but that he had ever heard him spoken of by those that did know him, to be a man of a very changeable disposition and extraordinary temper.

THE third evidence † deposed, That he had received a writ of *de homine replegiando*, and that he went to the gate of Rockfield to execute it, but being told that said George Robert, accompanied by his father, was just gone out a courting :

† James Gale, sub-sheriff of the county of Mayo.

ing; and therefore thinking it unnecessary to enquire any more about him, he returned home.

Upon cross-examination, he was asked, whether he had ever met with any opposition in the execution of his office, from said George Robert Fitzgerald, or any body belonging to him; he replied, he had not; but, on the contrary, had met with every civility from him that was possible. He was then asked, whether he would be afraid to go to Rockfield to execute any writ; he said, he should not: and that he was asked by the said George Robert, no later than the Friday before, if he still had a writ, or any other writ of the like nature, and that if he had, that old Mr. Fitzgerald was then at Rockfield, and begged he would go and execute it.

THE fourth evidence § swore, That George, the father, was under restraint.

On

§ Hugh Hems, brouge-maker.

On his cross-examination, he was asked, whether he had not been in a corps of volunteers under the command of Geo. Robert, at Rockfield; and whether, for his bad behaviour was turned out of the said corps, and disgracefully stripped of his uniform; and whether, on his being then turned out of the corps, he did not declare he would *be revenged* of said Geo. Robert, and that he would go over to, and side with the said Charles Lionel Fitzgerald; and whether he did not say, that he was certain that the said Charles Lionel would give him cloaths, or any thing else he wanted; and whether a new suit of cloathes, which he had then on his back, were not given him by Mr. Charles Lionel Fitzgerald. All which he admitted, except that he said, the cloathes he then wore were given him not by Mr. Charles Lionel Fitzgerald himself, but by the servant of the said Charles Lionel Fitzgerald. Said Hems was also asked, whether he had not, before that time, made

made an affidavit, that he was actually *hired* by the said Charles Lionel Fitzgerald to shoot the said George Robert; to which the said Herns replied, that he was not; but that said Charles Lionel had only given him a blunderbuss, loaded with swan-drops, to shoot the said Geo. Robert's *horse* under him (the said Geo. Robert); that he had such an abhorrence to the evil-doings of the said Charles Lionel and his party, that he left them. He also admitted he had made such an affidavit ||, and said it was true. He then being asked, what made him return to said Charles Lionel; he would give no answer.

|| A copy of which is annexed in the Appendix to this Appeal.

EVIDENCE

EVIDENCE FOR MR. GEORGE ROBERT FITZGERALD.

THE first evidence produced on behalf of the said George Robert Fitzgerald*, deposed, That he had been several times at Rockfield; had seen Mr. Fitzgerald, the father, walk about the demesne by himself; that he had been in company with him several times, and alone with him several times, at the house of Rockfield,—that he always had seen him very chearful and at his ease, and did not consider him, nor did he appear to him, to be under any restraint.

Upon his cross-examination, he was asked, why he took upon him to say he was under no restraint :---His answer was,
That

* The Reverend William Crowe, minister of the parish of Castlebar.

That he had known Mr. Fitzgerald, the father, for some years ; that said Mr. Fitzgerald for this year or two past, had looked upon him to be his friend, and as such, and also as minister of the parish of Turlough, had Mr. Fitzgerald, the father, been under any restraint, he thought he was the proper person to have made known his situation to ; and that if he had mentioned to him he had been under any restraint, he would have made it known to the world, and would have taken such steps as the law pointed out, to procure his release. He was then asked, whether he had not heard it reported in the country, that the said Mr. Fitzgerald was confined ; he said, he had ; but if he was to believe his own senses, he was free, and not under the least restraint whatsoever †.

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† A writ of *de homine replegiando* having been returned by the sheriff, in the month of April, must certainly have given rise to such report, which afterwards had been industriously circulated by Charles Lionel Fitzgerald.

THE second evidence ‡ deposed, That he was sent for by George Robert Fitzgerald to attend a tenant of the estate of Turlough, who had received a wound upon his head; that he went from the house of Rockfield in company with the said George Fitzgerald, the father, to the house of said wounded tenant, which was between two and three miles from Rockfield aforesaid, and that they were unattended by any person whatsoever; and that said George, the father, conversed with said Bell very chearfully, and never mentioned that he was under any restraint whatsoever; and that he the said George Fitzgerald, the father, then and there took the information of the said wounded man against the persons who had wounded him, and granted a warrant upon said deposition, and afterwards returned with him (said Bell) to Rockfield, and invited him to dine with him, which he was obliged to decline, being engag-

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ed.

‡ Doctor Bell, surgeon to the County-infirmary.

ed; and that he had seen him frequently afterwards at Rockfield, and did not, nor could not, look upon him to be under any restraint whatsoever.

Upon his cross-examination, he was asked, whether it was upon the high-road they road together; and whether the said George Fitzgerald, the father, could have made his escape, had he been so minded. His answer was, That they rode upon the King's high-road,—that there was no person but themselves—that Mr. Fitzgerald, the father, was very well mounted, and that he saw nothing that could prevent him from going wherever he chose, as he did not, nor could not, possibly look upon him (said Bell) as any restraint upon him. He was then asked, whether he had heard it reported in the country, that Mr. Fitzgerald, the father, was confined; he said, he had, but did not believe it.

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THE third evidence † deposed, That he and his family had dined at my house ; that he saw my father there very chearful and in high spirits ;---that he was seated at the table, not as a prisoner, but as the actual master of the family, and that every respect, observance and attention was paid to him as such ;---and that he considered him under no restraint whatever.

Upon cross-examination, being asked, whether he had not heard a report in the country, purporting that my father was a prisoner in my house. Answered, He himself had heard such a report, but that neither my behaviour towards my father, nor my father's unrestrained mode of living in my house, indicated any grounds for such report.

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† Mr. Bolinbrooke, a gentleman of fortune in the neighbourhood.

The fourth evidence || deposed, That he had seen Mr. Fitzgerald, the father, several times at Rockfield-lodge,—that he seemed very chearful.

On the cross-examination he was asked, whether he had not brought a letter from Charles Lionel Fitzgerald to George Robert Fitzgerald, relative to George, the father; and whether George Robert had not positively refused to be received by the said George Robert Fitzgerald, who said, he never would receive any letter whatsoever from the said Charles Lionel Fitzgerald, after the *violent outrage* * he had committed on him in the streets of Castlebar two days before.

THE fifth evidence † deposed, That there

|| The Reverend John Thomson.

* Which was attacking him with a case of pistols in his hands in the street, giving him gross language, and daring him to go out of the town to fight him.

† John Fitzgerald, the steward and confidential friend and receiver of the rents of George Fitzgerald, the father, for many years.

there had been a dispute between the said Charles Lionel Fitzgerald and George Fitzgerald, the father, owing to the said Charles Lionel having brought to him, and produced a deed ready engrossed, conveying all the said George the father's property to the said Charles Lionel; and upon the said George the father's refusing to execute the same, the said Charles Lionel declared he would leave him, and take care of himself;---that, in consequence of said expression, the said George the father, sent said John Fitzgerald with a message to said George Robert, proposing an accommodation between the said George, the father, and George Robert, and to meet on that very day for the purpose, which they accordingly did, at a little distance from Ballinrobe, and, as he imagined, settled all matters between them, and agreed to go to Rockfield-lodge with the said George Robert, which he accordingly did;---that said John Fitzgerald always attended George, the fa-

ther, wherever he went ; and accordingly did, by the desire of the said George, the father, go with him on that occasion, to Rockfield-lodge, and stayed with the said George Fitzgerald, the father, all the time he remained at Rockfield-lodge ; and that the said George Fitzgerald, the father, was under no restraint there.

He was cross-examined, and did not vary from his testimony on the direct examination.

SIXTH evidence for the defendant *, This gentleman at first objected to be examined as a witness ; but on application to the court, he was informed, that it was every day's practice to admit counsel as evidence, where they were not actually retained or employed in the cause at issue. This ceremony, which is a mere matter of course, being over, this gentleman deposed, That he had been sent for
to

* One of the council then upon the circuit.

to my house, in order to settle a Chancery-bill praying an injunction to stop proceedings at common-law, in a cause where Mr. Charles Lionel Fitzgerald was plaintiff:—that my father most liberally exclaimed against his son Charles Lionel Fitzgerald;—that my father then informed the council, that he was more habituated to filing these bills in Chancery than I was; and that he would himself give the instructions to him for filing this bill, and according did give instructions.——This witness farther deposed, That he had staid at Rockfield (the name of my house) three days;—that during all this time my father was in great spirits, frequently went out by himself, and that he could by no means consider him as a prisoner in any sense whatever,

THUS have I summarily and truly (as near as I can recollect) stated as well the evidence for the crown, as that for the party prosecuted; and if I may be allowed to judge in my own cause, I will venture to say and insist upon it as sound law, that if there had been any the least doubt remaining in the breast of the jury below, or with the judge upon the bench, whether I ought not to have been fully acquitted upon the bare hearing of the evidence *for the crown*; I was abundantly and super-abundantly intitled to a verdict in my behalf, after *my own evidence* had been heard.-----The event, however, being quite contrary, it must be owned that some merit is due to the ingenuity of Mr. Carleton, in even being able to find out any possible pretext whatever for directing the jury to bring me in guilty. The public, I imagine, will be desirous to hear the particular points, grounds, and maxims of law, on the authority of which, this ingenious judge (although for the future, I hope, will

will always be distinguished and dignified by the title of HEARSAY JUDGE) gave his directions to the jury. Directions, which will ever remain a stigma, not indeed on the jurisprudence of this realm, nor yet upon the executive power which is constitutionally lodged in the breast of our juries, but upon that odious, over-ruling, directive power, which hath been anti-constitutionally usurped by the judges presiding in our criminal courts of law. That I have some reason for exclaiming against this usurped power is, in a manner, self-evident, since it is most certain, that if my council had not been as clear in their opinions as I was in my own conscience, that I should have been acquitted by a fair and most honourable verdict, they most doubtless had ample grounds to have moved for an arrest of judgment. I exclaim not against this usurped power, where a judge shall use it fairly and candidly; that is to say, where from the written minutes he may have taken, he sums up in a short, dilucid

reca-

recapitulation, the evidences which have been given on either side, nothing adding, nothing diminishing, and then leaves the whole issue to the adjudication of a jury, who, if they have any doubts in matter of law, and shall apply to the judge upon the bench, it is time enough for him to then interpose, because he is seated there for that special purpose, and no other, but in particular, not for the purpose of directing a jury, either how or what they are to find, unless he be previously asked and permitted by them so to do. For indictments at common-law the jury are both judges of *fact* and of the law, unless they please, in matters of law, to consult the judge or judges on the bench.

Had Mr. Carleton exercised this usurped power under such restrictions, the power itself would have merited rather the appellation of one of the *desiderata* in the executive branch of our jurisprudence, than to be deservedly stigmatized

tized with the tyrannical mark and brand of a modern iniquitous usurpation. But how did this impartial judge proceed?— Did he look upon his notes, and from that refreshing repository give the heads of each evidence as it came before the court *pedetantim et seriatim*, as I, for the sake of justice and strict impartiality, have here done? Or rather, Did he not jumble the several evidences into one indistinct, heterogenous, incompatible mass of light and darkness, truth and falsehood, credibility and incredibility? And, pray, what was the powerful argument he partially picked out of one of the evidences, in order to wire-draw (if I may use that expression) the jury into a persuasion, that they ought to bring in a verdict of Guilty? Why, truly a question *in the negative* had, upon a cross examination, been put by the council for the prosecution to one of my witnesses? This question was, Whether he had *not* heard a report in the country, purporting that my father was a prisoner in my house?—

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The answer my witness gave was that of a gentleman, open, right, and impartial. Yes; he said, he *his-self* had heard such a report; but that neither my behaviour towards my father, nor my father's unrestrained mode of living in my house, indicated any grounds for such report.— Yet on this gentleman's testimony did this Eyhemeris, this judge of a day, presume to tell the jury, they were not bounden to give implicit credit to the testimony of the different witnesses they had heard, because there was other matter of evidence highly worthy of their notice, and that was the hearsay evidence, or report of the country: the hearsay of the country was (he said) the principal object they had to consider, for certainly it was, he assured them, the object of the greatest magnitude and moment.

It was in vain for my council to remark, that where a writ *de homine replegiando* had been directed to the sheriff of the county six months previous to my trial

trial, there must necessarily have been a report, however groundless and malicious it might be, that my father had been restrained of his liberty by me. It would have been equally in vain for my council to have insisted, that the hearsay evidence alluded to had been fully contradicted by several witnesses of respectable characters and unimpeachable credibility ; and even had this same hearsay evidence not been so contradicted, still it would not have been of sufficient weight in an indictment at common-law to find a free subject of this realm guilty,—guilty, I mean, of such a breach of the peace, which should superinduce a three years imprisonment and a fine of one thousand pounds sterling to the king. And the reason why it should not have that weight is obvious to the very meanest capacity.

---For no evidence can be admitted, but what is upon oath ; and if the first speech was without oath, another oath that such speech did exist, makes it no more than a bare speaking ; and if so, is of no value
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in a court of justice.—Besides, the party so indicted would in such case have no opportunity of a cross-examination. And if the person or persons be living who first broached the report on which this hearsay evidence was grounded, then the evidence given in court would not have been the best evidence that the nature of the thing did admit of. Powerful as these reasons would have been, and sound law, as they indisputably are, yet it would have been in vain for my council to have urged them, for Mr. Hugh Carleton, even before my trial came on, had predetermined to imprison me for three whole years, as hath already been mentioned. Accordingly he directed the jury to ground their verdict upon *hearsay-evidence*, nor were the jury inattentive or inobedient to his directions; for in less than a minute's consultation they brought in their verdict "*guilty of the premises.*" But what those premises were doth not distinctly appear, and the public are left at large to ascer-
tain

certain whether by the word PREMISES I was found guilty of the assault and battery, or singly of the imprisonment of my father. Happy for the jury! that they gave so confused a verdict, for I am very certain there is not one of them at this day, can conscientiously lay his hand upon his heart, and say that I was really and *bonà fide* guilty either of the assault, or of the battery, or of the imprisonment, then sworn against me. At this day, I say, they know to the contrary, however they might, through a gross misrepresentation of hearsay or report, on the day of my trial have been led to think themselves then justified in finding me guilty.

If Mr. Hugh Carleton was highly reprehensible in directing the jury to find, upon this hearsay-evidence, in direct opposition to evidence upon oath, he was not less unpardonable in precipitately hurrying to pronounce sentence against me, without previously asking me, whether I had any thing for myself to offer,
or

or could say, why the court to judgment, for the pretended offence, ought not to have proceeded. Yet such was his over-eagerness to get me, as it were, within his own clutches, that in breach of all law, justice, and common usage, he without staying to know whether I had not sufficient grounds for moving the court in arrest of judgment, he temerarily passed that judgment upon me, which, if it be not reversed in pursuance of the writ of error brought, and in part already argued before the Court of King's Bench, must for ever remain an indelible record of the alarming and woeful insufficiency of the jurisprudence of this unhappy country.

Having thus fully proved to the entire satisfaction, I trust, of every impartial reader, that the verdict, as well as the judgment, were contrary to law, and that they were unmerited on my part, I apprehend I have clearly answered and refuted the third charge brought against me
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by Mr. Charles Lionel Fitzgerald. For, as he attempted to persuade the public, that the verdict given against me was an incontestible proof of the veracity of the various letters, advertisements, and paragraphs, he had inserted in the public prints, to the prejudice of my character; so I myself having developed and exposed to public view some few of the many horrid acts of perjury and subornation of perjury which he hath been manifestly and most flagitiously guilty of, in his examination taken before Mr. Justice Jordan: and in divers other situations of life, it should necessarily follow that the petty-jury and Mr. Judge Carleton have suffered themselves to have been imposed on by the fallacious and perjured affidavit of Mr. Charles Lionel Fitzgerald; and that consequently the verdict itself is no proof of my having either assaulted, or battered, or imprisoned my late father; seeing my father's own affidavit is an incontestible proof to the contrary. And *this* being the chief, if not the sole, object

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that

impossible to retrieve his character, without risking the loss of my own, in giving any farther countenance to so consummate a villain. In order then to justify my present conduct towards him, and to shew into what depths of infamy he had irrecoverably plunged himself, I laid before the public a choice correspondence, in which the names of the Reverend Dean Bailey and a *soi-disant* Capt. Donellan make no inconspicuous figure; the *former* for his *unchristian-like* occupation, in dictating letters of clandestine defamation for Mr. Charles Lionel Fitzgerald to copy, and that too for the worst of purposes; the *latter* for his *superlative adroitness* in counterfeiting any handwriting whatever.

Having thus finished the *first* division of this my Appeal to the Public, I proceeded to the *second*, in which my perjured prosecutor plumply swears, that I had assaulted, battered and imprisoned my father in my own house; and that, as he
verily

verily believes upon the Holy Evangelists, I had actually caused my father to be privately murdered. The latter part of this most flagitious deposition scarcely required any answer at all, as my father, when I first sat down to write this Appeal, and till within this last month, had been seen almost every day in the streets of Dublin. As to the former part of this false and iniquitous affidavit, I produced no less than six vouchers in proof that my father, during his abode with me in my own house, did come there freely, voluntarily, and of his own mere motion.— Amongst these vouchers was the testimony of my father's confidential agent, *that* of the rector of the parish in which my father then was, and I now am, the chief lord and feignurial tenant;—that also of the Right Hon. Colonel Owen, one of the governors of the neighbouring county of Sligo ;---and lastly, *that* of my father himself, who, in his affidavit positively swears, “ that he is not confined at Rock-

that between my father and *his* mother, I was not born when it commenced ;— and as to that between my father and my own mother, I was scarcely three years old when it began, nor could it have originated in any other person than my father, who, in violation of all law, human and divine, and even of the laws of common decency, had taken a base harlot under his own roof. To this base woman I also shewed, that almost all the misfortunes, misunderstandings and deadly feuds, which have raised such a torrent of ill-blood between my father, Mr. Charles Lionel Fitzgerald, and myself, are primarily attributable ; and that she was the first person who egg'd on Mr. Charles Lionel Fitzgerald to thirst so insatiably after my blood, as he hath done ever since he hath been under the dreadful influenza of that abandoned strumpet.

So far from being myself the cause of these, or any of these, family-breaches, I
shewed

shewed how candidly and brotherly I had acted with Mr. Charles Lionel Fitzgerald, respecting the disposition Lady Mary Fitzgerald had made of her estate by her last will and testament ; the whole of which I requested her to bequeath to that man, whom I then called by the true and affectionate name of BROTHER.---- Did this act either betray in me a propensity to breed quarrels in our family? or did it argue an over-reaching cunningness on my part, to secure and monopolize the whole of Lady Mary's fortune and property to myself?---And have I not shewn, that I did every thing in my power to reclaim that lost sheep, that ruined and forlorn wretch, Mr. Charles Lionel Fitzgerald, until I discovered, by a bundle of letters which accidentally fell into my hands, that by his swindling negotiations, and his bare-faced endeavours to supplant me, and clandestinely to rob me of my mother's good opinion and best affections ; I found it impracticable and

that remained to be cleared up, I here dismiss this third and last division of this my *Appeal to the Public*.

But the great variety of matter which it became necessary to insert, in this my defence, having insensibly lengthened this publication beyond the ordinary limits of even the very best of memories, to recollect with clearness and precision, I will, as a concise memento, give a short recapitulation of the method, and also of the principal arguments, facts, and vouchers, scattered up and down in the preceding sheets.

The public, therefore, to whose candour and impartiality I now appeal, will be pleased to call to mind, that my prosecutor, Mr. Charles Lionel Fitzgerald, lays three different accusations to my charge. By the first, he would persuade the public that I compelled an aged parent into an expensive Exchequer-suit, and that I am the primary and sole cause of

of ALL the quarrels which disunite, distract, and disgrace our family.----In refutation of so groundless a charge, I proved that this same application to the Court of Exchequer, was made at the special instance and most pressing request of my father. With respect to the charge of my having been the primary and sole cause of all our family-quarrels, I likewise proved, that after Mr. Charles Lionel Fitzgerald had actually robbed my father of £500. sterling, I made up the misunderstanding between them both.—That after he had married a little thing of a girl, without a single farthing fortune, and without his father's privity, assent, or consent; I made up that breach, and with much difficulty reconciled the old gentleman to his *worthless son*, as he then called him.—Two other different quarrels in our family, which Mr. Charles Fitzgerald had obliquely accused me of as being the primary cause of them; I clearly ascertained they could not be placed to my account; because, as to

field or elsewhere, but that he is at full liberty to go or stay about his lawful occasions, just as he thinks proper."

Having thus given the *lye-direct* to one part of Mr. Charles Lionel Fitzgerald's affidavit, I took under examination another part of it, in which he swore, I had told Mr. Lyndsay that I was determined not to suffer my father to depart from my house. To be informed of the truth of this deposition, I wrote to Mr. Lyndsay, and received for answer, That he never had told Mr. Charles Lionel Fitzgerald any such thing.

The *second* charge sworn against me by my prosecutor, Mr. Charles Lionel Fitzgerald, being thus ascertained to be an absolute falsehood, I took in consideration the third division of this my Appeal.

And here I observed, that my prosecutor had proudly boasted, that all the advertisements

vertifements in the public prints, and other rumours and reports, which had been diffeminated abroad, muſt of courſe be true, becauſe they had been confirmed by a jury, who had found me guilty. This falſe reckoning I fully expoſed, by ſhewing that the juvenile, the maiden, the virgin judge, who ſat in judgment upon me, had directed that very jury to find the facts, not from the clear and poſitive evidence which had come before them, but upon the HEARSAY of the country. I alſo obſerved, that this petit jury who had thus ſuffered themſelves to be directed contrary to all law, all uſage, and contrary even to common ſenſe and common decency, were every one of them *Roman Catholics*,—that I myſelf am known in the county of Mayo to be what is called a **STAUNCH PROTESTANT**; and I further obſerved, that not one of this petit-jury was actually ſeized of a forty-ſhilling freehold in the county of Mayo, nor in any other county in the whole *British Empire*. And in proof that no
credit

with blunderbusses and other fire-arms. Mr. Edmond Jordan, a country justice of the peace, notoriously known to be under the influenza of the Altimont family, takes this deposition. And without once informing himself whether Mr. Charles Lionel Fitzgerald had not sued me on a *civil* action for the same identical pretended offence, and without enquiring whether such civil action was still depending, and not discontinued, blunderheadedly grants his warrant for apprehending me; and he grants this warrant without making the least enquiry, whether the assault and battery so sworn against me by Mr. Charles Lionel Fitzgerald, was a real assault and battery; or whether it was one of those assaults and batteries which, to the scandal of all legal jurisprudence, is known to be a mere *fictio juris*, and in which the *vi et armis* have no real existence, and are only and merely *nominal*. For although the former species of assault and battery is, doubtless, a breach of the peace, and as
such

such, is amenable to, and cognizable in, our *criminal* courts of judicature, yet the latter species of assault and battery being merely ideal and having no foundation in fact or truth, I say, and insist upon it as sound law, that it is only a *private* tort, and by no means can be tortured to amount to a *public* injury, and consequently is only cognizable in our *civil* courts of judicature. Mr. Justice Jordan, I say, without making these preliminary necessary enquiries, grants his warrant upon the very face of the deposition, and not improbably without putting himself to the previous trouble of reading it. And to whom, I pray, does he entrust the execution of this warrant? Not to any known bailiff of the county, — not to any known constable, or other of the king's ministers, or to any other *indifferent* person; but he puts it directly into the hands of Mr. Charles Lionel Fitzgerald, for him to put it in execution. And yet by his oath of office, an oath founded on a statute

three whole years. The generality of mankind will not be able to see the particular reason why my imprisonment should be of so long a duration, contrary to every law-precedent now in being, and expressly contrary to Magna Charta, by which it is declared, that the punishment shall only be *secundum quantitatem delicti*. But three years imprisonment fully answered all the purposes the parties in conspiracy had in view. For it must necessarily prevent me from giving the Altmont family any effectual opposition the next general election for the county of Mayo, which is the principal object they could have in view. And with respect to Mr. Charles Lionel Fitzgerald, it gave him full opportunity to get possession of my landed property; it enabled him, without any possible or at least effectual molestation on my part, to cut down and sell all the timber on my estate, to grub up and sell all my extensive plantations, and to pluck up the railings about my demesne, sixteen car-loads of which

which he hath had the effrontery to send up to his own house in the neighbourhood of Dublin.—It enabled him to sell all the bread-corn I had on hand, to the amount, I apprehend, of nearly £2000.—It enabled him to receive all the rents of the estate, and to apply them to his own use.—It enabled him to craze to the ground a little *maison de plaisir*, I had built in my garden.—And it enabled certain persons under his influence and controul, to set my mansion-house on fire in the night time, and to burn that also to the ground. All this, and incredibly more damage have I already suffered in my property, through Mr. Charles Lionel Fitzgerald, in consequence of the adjudication of being imprisoned three years.

Let us then specify some few of the common law rights and statute laws of this land, which have been violated in the course of this conspiracy.—In the first place, Mr. Charles Lionel Fitzgerald makes a plump affidavit that I had assaulted, beaten, and wounded my father,
with

credit whatever ought to have been given to the evidence of HEARSAY, I inserted my father's affidavit at full length, in one part of which he solemnly deposes upon oath, " That whereas he hath been " informed an *affidavit* was made (by Mr. " Charles Lionel Fitzgerald) setting forth " that he (my father) was confined a close " prisoner in the house of Rockfield ;— " now he (my father) thinks it but just " to declare to the world, that *all such* " *affidavits*, advertisements, and reports, " are malicious and *false*, and only cal- " culated by his UNFORTUNATE SON " CHARLES LIONEL FITZGERALD, and " other evil-minded people, with an in- " tent to injure, in the eyes of the pub- " lic, the character of his BELOVED " ELDEST SON and HEIR, GEORGE RO- " BERT FITZGERALD."

These being the great outlines of my Appeal, I have thought it proper to reduce them into a narrow compass by way of recapitulation, omitting many other matters

matters of nearly equal importance to the justification of my character, in order not to spin out and lengthen this narrative beyond the bare statement of facts and circumstances, absolutely necessary towards making it clearly intelligible to the intelligent reader.

But behold, I pray you, what a number of *common-law* rights are invaded and torn up by the roots; and what a number of *statute-laws* are broken and set at nought, merely to protect and justify one aberration from the right line of acting between man and man; so true is the Aristotelian maxim, that *uno inconvenienti dato mille sequuntur*. By this aberration from the right-line, I mean the combination and conspiracy entered into between Mr. Charles Lionel Fitzgerald and the Altimont family, to get me indicted for a breach of the peace which I had never broken, and on that indictment to manage matters so that I should be imprisoned for the enormous length of time of
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statute made for that special, he is sworn
 " that he shall not direct, nor cause to
 " be directed, any warrant (by him made)
 " to the *parties*, but that he shall direct
 " every such warrant to the bailiffs of
 " the county, or other the king's officers
 " or minister, or other *indifferent* persons,
 " to do execution thereof. So help him
 " God." So that here is not only a simple breach of a statute, but also a voluntary, wilful perjury, and a damnation of his soul.

This warrant thus disposed of by Mr. Justice Jordan, the only consequence that could be reasonably expected, did regularly follow. For Mr. Charles Lionel Fitzgerald, with vengeance in one eye, and all the furies in the other, furiously rushed into the grand-jury-room where I was sitting on the business of the county (having been sworn-in one of the grand-jury some hours before) and collaring me by the throat like a ruffian, with a volley of most blasphemous oaths announced me
 to

to be his prisoner. So that in this one act of violence there is first, a violation of the common law, in and by which it is expressly declared, that every subject coming to, and returning from, the county assizes, shall be free from arrests, *nisi probatus fur sit*; and secondly, there is a repeated breach of the statute on the part of Mr. Chas. Lion. Fitzgerald, 7 W. III. c. 9. made for the more effectually suppressing prophane cursing and swearing; and also on the part of the several justices of the peace in whose *hearing* those blasphemous oaths were uttered, for their having wilfully and willingly omitted to put the act itself in execution against the offender, and for which omission each of them is liable to forfeit and pay the sum of five pounds sterling.

I come now to take a cursory view of the high-sheriff's conduct in this prosecution. Mr. Valentine Blake was high-sheriff for the county of Mayo, but that gentleman being out of the kingdom,

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Mr. John Gale the under-sheriff officiated in his stead; and this Mr. John Gale, through the influence of the Altimont family, had been suffered to enjoy the same office of under-sheriff in and for the county of Mayo the two preceding years, and this was his third year of his continuing to officiate as under-sheriff. So here is clearly and repeatedly a breach of the 11th of Ann, c. 8. by which it is enacted, that no one shall be under-sheriff who in three years before acted in the same county in the same capacity, under the penalty of forfeiting the sum of five hundred pounds, *toties quoties*. However we would have been apt to have concluded, that an under-sheriff who had for so many years successively continued in office, must have been very expert and correct in performing the various parts of his duty, and that, at least, he would not have put any persons upon the pannel, but such as he knew by law were qualified to act as jurors. And yet the event proved quite the contrary;—for two of
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the twenty-four grand-jury-men were under age, and as such are, by a special act of parliament, disqualified from acting as jurors, and thirteen others of this same grand-jury were, and still are, out-laws on record, and as such are also disqualified, by another act of parliament, from serving on any jury whatever, until such disability shall have been duly and legally removed. With such a grand-jury, every one of the said outlaws being notoriously under the influence of Lord Altimont, and an uncle of Lord Altimont at the head of this grand-jury, what lenity, what indulgence, I had almost said, what act of equal justice could I reasonably, could I possibly expect, or look for? If Mr. Under-sheriff Gale was thus assiduous to oblige the Altimont family in *pick-ing*, I do not absolutely say, packing a grand-jury to the summit of the wishes of Lord Altimont, was he one jot less compliant to his lordship in his management of the petit-jury? Here, I think, he even outdid his former outdoings.—

For the whole twelve persons who constituted this petit-jury were every one of them PAPISTS, and as such must have been naturally inclined to wish well to the Altimont family, more especially when the point in issue might be supposed by them to be a kind of contest between me and Lord Altimont, as I am known throughout the county of Mayo to be a staunch Protestant, and firmly attached to the Hanoverian succession.— But even in summoning this jury of Papists, Mr. Undersheriff Gale did not make it appear to the court, nor does it appear upon Judge Carleton's record of the trial, that this jury had received any summons. So here is a breach of the 29th of Geo. II. ch. 6. by which it is enacted, that the sheriff shall summon every person, named in the king's mandate, by the space of *six days*, at the least, before the time appointed for the jury to appear. Nor did it appear to the court, nor is there any constat on Mr. Carleton's record, that any one of this jury of Papists were described

scribed either by the additions of their estate, or of their mysteries, or of their places of abode. So that from any thing, that appears to the contrary, the whole of this petit-jury might be resiants in Portugal or Italy, and might be subjects to some foreign Popish Prince. And I am actually informed, that one of the jury, at the same time he was sitting in judgment upon me, Mr. ^{Henry} Robert Lynch by name, was and still really is a burges of the town of *Cadix* in Spain; and that consequently in the eye of the law he can be considered no other than as a subject of the crown of Spain: but this *Spaniard* coming over to Ireland on a visit to his friends and relations, Mr. Under-sheriff Gale shot him flying, and put him down as a fit and proper person to sit in judgment upon me, which he thought he might safely do, as he had carefully avoided to give either the addition of this *Spaniard's* business or calling, or that of his usual and known place of residence.

So here is a flagrant breach of the 7th and 8th of H. VI. by which it is enacted, that to all the jurors there shall be the additions of their estates, or of their mysteries, or of the places of their abode.— But this is not the only act of parliament that was broken in this stage of the prosecution against me, for as not one of the twelve petit-jury-men was seized of one shilling freehold land or rents in the county of Mayo, or indeed in any other in this kingdom, it follows that the 29th of George II. c. 6. must have been wantonly and wilfully broken, for by that statute it is enacted, that every jury-man shall have ten pounds freehold at least in the county where he is to act as jury-man.—And it is farther to be noted, that besides the breach of two several acts of parliament in this stage of the prosecution, there is also a glaring and flagrant violation of the 29th article of Magna Charta. For if none of the petit-jury were freeholders, as most assuredly they were not, then it cannot possibly be said,
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in construction of law, that I stand condemned *per legale individuum* PARIUM MEMORUM.

We shall now see, whether Mr. Hugh Carleton, my judge, paid any greater respect and deference to the *common law* rights of the subject, and to the express, positive statutes of this realm, than had been paid by any other of the preceding actors in this tragic-comic farce of an indictment. Passing over his unwarrantable conduct in taking up his residence at Lord Altimont's, where he could be sure of hearing only the most partial misrepresentation of this my supposed offence, which was to come in judgment before him the day following :—passing over his unguarded expressions of *swearing* in the public streets of Castlebar, that he would fine me in a thousand pounds, and imprison me for three years; and all this before the grand-jury had either found the bill, or the petit-jury had given their verdict :—passing over his insolently
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and illegally ordering me into the custody of the sheriff, on a *supposition* that I had resisted and opposed Mr. Charles Lionel Fitzgerald, in the execution of Mr. Justice Jordan's warrant, which he afterwards found to be false and not true:—passing over his suffering so irregular, informal, and vitious an indictment, to be brought to a hearing; vitious, in that it makes three several counts of one and the same offence, and so multiplying one offence into three several distinct breaches of the peace, when at the same time he ought to have observed to the court, that the offence itself so laid to my charge, being of the nature of a *private* tort, and not a *public* injury, was not a proper object for a trial in a *criminal* court of judicature:—passing over, I say, these and many other irregularities and despotic deviations from the fair line of impartial and equal justice, committed by Mr. Carleton *previous* to my trial, I come to take notice of the partial; uncandid, and loose manner in which he summed up the
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the evidence. For without once mentioning the names of the several witnesses who had clearly and fully deposed, that they considered my father in every respect as a *free* man, and under no restraint whatever, without mentioning, I say, the very names of any one of these witnesses, Mr. Carleton tells the jury, "they were to *find* upon [the HEARSAY evidence of the country, in direct contradiction to the *viva voce* evidence they had heard with their own ears." So that Mr. Carleton by directing the jury to find a free subject of this realm guilty on *hearsay* evidence, hath the honour indeed of broaching so new a doctrine; but let him remember that in so doing, he hath, as far as in him lay, rendered our trials by jury, which is the dearest *common-law right* we enjoy, entirely inefficacious, nugatory, and useless. But it is to be hoped, that so daring and dangerous an innovation on the constitution, when it shall come to be publicly known, will be checked by the timely interposition

tion of the legislature, and that so heinous a perversion of the judicial authority will meet a suitable reprimand;—certainly an innovation of that magnitude calls aloud for instantaneous, public censure, and public punishment. For mark, I pray you, what a different opinion respecting *hearsay-evidence*, Mr. Serjeant Hawkins entertains, book ii. chap. 46. sect. 14. “It seems agreed (saith this great oracle and luminary of our crown-law) that what a stranger hath been heard to say is, in strictness, no manner of evidence either for or against the prisoner, not only because it is not upon oath, but also because the other side hath no opportunity of a cross-examination: and therefore it seems a settled rule, that it shall never be made use of, but only by way of illustration of what is properly evidence.” He then, in confirmation of his opinion, cites several adjudged cases from the State Trials, vol. ii. fol. 332, 414, 415, 761, 802, 803, and from vol. iv. fol. 33. If Mr. Judge Carleton was
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thus culpable in the extreme in giving such anti-constitutional directions to the jury, was he less so, when he came to pass judgment upon me his-self? There is no doubt he will, if possible, appear still more culpable. For before he came to pass his judgment upon me, I apprehend, he should have well weighed, whether the indictment was an indictment at common-law or statute-law only. If it did not conclude, as it certainly does not, *contra formam statuti*, then it most indisputably must have been considered by him as an indictment at common-law. On indictments at common-law, he must have known that the punishment to be inflicted, is not left to the arbitrary discretion of the judge; on the contrary, the punishment is certain, fixed, and not to be dispensed with, at least not to be exceeded; and the judge hath nothing more to do, but to pronounce the law itself, *verbatim et litteratim*, nothing adding, nothing diminishing; and that he might easily have done in the present case;

case; for the law itself, like all other *common-laws*, is comprised in little more than one line. It comes under the third article of our common-law, and is intituled, "*Articulus de pacis publicæ violatoribus*;" —and runs in the few following words, "*Si quis PACEM REGIS violaverit, CXLIV. libris emendet*;" which in plain English is, "If any one shall have broken the KING'S PEACE, he shall pay a fine of one hundred and forty-four pounds." I enter not here into the disquisition, whether the hundred and forty-four pounds above mentioned be pounds sterling, or whether they be livres tournois (I know of a certainty which of the *pounds* they are), it is sufficient for me to have shewn that no judge, on an indictment at common-law for a *breach of the KING'S PEACE*, can constitutionally inflict a greater fine than one hundred and forty-four pounds sterling; and that every judgment *in excess* of that sum for that species of offence, is a clear and wilful violation both of the positive

positive letter and manifest spirit of this article of our common-law. I say, *in excess*, because at the time the treaty between Duke William of Normandy and the people of England (a treaty now better known by the name of the COMMON-LAW of England) was entered into, ratified, and confirmed, the fines to the crown *then* made a considerable branch of the royal revenue, and as such, were in *all* breaches of the King's peace exacted and levied to the utmost farthing; yet now when the kings of Great-Britain and Ireland have commuted all their royal revenues for a civil list establishment of nine hundred thousand pounds sterling annually, I should apprehend there is an equitable reason for the king's judges (with the royal assent, I mean) to mitigate the fine of one hundred and forty-four pounds, to any less sum.-----But hath this mitigation been observed in my case? On the contrary, hath not Mr. Hugh Carleton, my judge, exceeded this ancient, well-known common-law fine
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conduct in imprisoning me for so enormous, I had almost said, for so infamous, a length of time, on the ground that other judges have done the like, and that too in indictments at common-law.— I might in answer observe, that other judges too have been hanged, drawn and quartered, for only having trodden in the footsteps of their predecessors. But the question is not, whether other judges have ignorantly or wilfully departed from their line of duty, and conformable to their oath of office have answered for the same in body, lands, and goods;—the question is, whether Mr. Hugh Carleton is, or is not, criminally culpable for having passed so anti-constitutional a judgment against me? And I may say, without the possibility of being contradicted by any one sound lawyer in the kingdom, most certainly he is. For I have already clearly proved, that he could not without violating the common law of the land, impose a heavier fine than one hundred and forty-four pounds, and I have clearly shewn
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from a precedent corroborated by a resolution of the House of Lords, that he had no right or legal authority whatever to imprison me one single moment, because he will now, I hope, recollect, that the instant after he had passed this unmerciful judgment upon me, I made an offer to pay the fine in court. But he may say, perhaps, that the judges of the king's-bench, as well as those of the assizes, for upwards of two hundred years, have been governed only by their own discretion in the article of punishing convicts by fine, ransom, and imprisonment ;--and that the quantum of the fine and the length of the imprisonment, whether on an indictment at common or statute-law, cannot be lodged in a safer and more fit place than in the breast and discretion of the judges. To this inconclusive argument I might with equal strength of reasoning reply, that the judges of the king's bench have, for these last hundred and ten years, been in the possession of their *ac etiam*, their *clausum fregit*, and their

quo minus; but do they not in their own consciences know, that those engines of oppression are not warranted either by the common or the statute-law, and that on their first introduction into our law-courts they had, and even at this hour have, no other foundation or protection than the scandalous and autocratic effrontery of the then judges of his Majesty's several courts of King's Bench, Common Pleas, and Exchequer. So that this mode of argumentation concludes nothing at all, and we must come fairly at once to the question, and solve it by giving a clear, satisfactory determination, whether the judges of the King's Bench, as well as those of our County-assizes, be or be not authorized by the common-law to inflict a heavier fine than that of one hundred and forty-four pounds, or to imprison the party even for one moment (the fine being paid) on an indictment at common-law for that species of offence which is called "a breach of the King's peace."—And most indubitably neither the judges
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of his Majesty's Courts of King's Bench, nor the judges of our County-assizes, are vested with any such authority by the common-law; for the common-law, which hath been emphatically called "the perfection of human reason," would ill have merited so just and glorious an eulogy, had it left any thing to the caprices, the prejudices, the human frailties, or to the arbitrary discretions of the judges.-----I grant indeed this argument doth not hold good with respect to indictments or informations on penal statutes, because where a statute shall have given the judges of the King's Bench, and those of our County-assizes, full power and authority to fine, ransom, and imprison the party condemned, just as they shall think fit; in such cases, I say, were the fine to be ten thousand pounds, and the imprisonment ten years, the party could have no just cause for murmur, nor no foundation in reason for complaint. The judges would be acting under the authority of an act of parliament, and the party could

only blame and censure' himself for having sent a representative to parliament who could be any ways instrumental in passing so wrong-headed and insane a law, as that incontradictably must be, which leaves the fining and imprisoning a free subject of this realm to the arbitrary discretion of any judge whatever. I say, *insane*, and I think every such act of parliament may, with great justice, be so called. For if it be wisdom in our legislators to be checking our kings every moment from a possibility of their becoming absolute and arbitrary, certainly it can be no other than an act of insanity in the same legislators to make the king's judges absolute and arbitrary, since in effect it comes to one and the same point, whether you make your kings arbitrary in their own proper persons, or whether you make them only so *per autrui*. But as I intend to assign for error the excess of the fine I am to pay to the king, and also the anti-constitutionality of my imprisonment

prisonment for another error, in order to reverse the judgment so given against me by Mr. Hugh Carleton, it remains to be seen, whether the judges of the King's Bench will countenance Mr. Carleton in having inflicted on me a heavier fine than the common-law fine of one hundred and forty-four pounds, and whether they will think he had a discretionary power and rightful authority to imprison me for any length of time, he in his discretion should think fit. I have only to observe, that if the judges of the King's Bench shall not give-up this dangerous and anti-constitutional doctrine of arbitrary discretion, I mean, in cases of indictments at common-law, I trust that the legislature who are now happily employing their moments in settling the constitution anew, will not think this important and alarming innovation in the constitution unworthy of their most serious deliberation and sever censure.— Nor can it avail either the judges of the King's Bench, or those of our County-

affizes, to say that they have been in possession of this arbitrary discretion upwards of two hundred years. For the English secretaries of state had been in possession of their general warrants at least for the same length of time : and the English senate had also been in possession of an assumed power for upwards of six hundred years to legislate for this kingdom of Ireland. And yet, within these ten years, we have seen the English secretaries of state formally relinquish and give up the anti-constitutional idea and practice of general warrants : and within these three months we have seen the senate of Great Britain freely and liberally release us from their usurped power of legislating for this kingdom of Ireland. Wise nations, or bodies of men who act upon *principle*, will always be found ready to resign an usurped power, because they must know the rectitude of the following maxim, which justly states that *Id quod Malum est ab initio, tractu temporis nihil omnino valebit.*

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But this is not the only error I have still to assign ; there are two others, either of which, I apprehend, must necessarily superinduce a reversal of Mr. Carleton's judgment. The *former* of these two is founded upon there being no constat upon the record that Mr Hugh Carleton acted under, any commission of Goal-delivery, or of Oyer and Terminer. I say, *not any commission*, because a commission without the letters-patent of the King must, in law, be considered as no commission at all ; and for this plain reason, because by the 27th of Henry VIII. c. 24 sect. 2. it is expressly enacted, " That all Justices of Assize, Justices of Oyer and Terminer, (then simply styled Justices of the Peace) and Justices of Gaol-delivery, SHALL BE MADE by LETTERS-PATENT under the King's great seal, any grants, usages, or allowance, to the contrary notwithstanding." Now it does not appear by the record, as made up by Mr. Judge Carleton, that he was duly constituted either a Judge of Gaol-delivery, or of Oyer and

Terminer, under one of which pretended commissions I must have been tried, because there is not the least mention of any letters-patent of the King having been granted to him : and he very well knows, that *de non apparentibus et non existentibus eadem est ratio*, is such a maxim in our laws, that he must be considered to all intents and purposes as having acted under no commission at all, since by the words of the above-mentioned statute it is plain, that he could be *made* a judge by and under no other authority whatever than letters-patent under his Majesty's great seal of Ireland. This, I apprehend then, is such a clear and manifest error, that it must effectually and irrefragably reverse Mr. Carleton's judgment so illegally given against me.— Should it be objected, that the statute I have quoted is an English act of parliament, let it be remembered, that at the time Mr. Carleton made up his record of my trial, and that at the time I also sued out my writ of error for the reversal of
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his most unchristian-like, unmerciful judgment, this very English act of parliament was of force in this kingdom, by virtue of an Irish act of parliament passed in the 10th of Henry VII. chap. 22. which confirms all statutes made in England ; consequently the bench must be governed in this respect by the English statute above-mentioned, to have been confirmed by an Irish act of parliament. But granting, merely for the sake of argument, that this English statute was not then in force in this kingdom, which still I absolutely deny, yet the principle and spirit of this statute must for ever remain and be of force, though there were no such statute in being. For what other state-axiom doth this statute set forth and maintain, than that no person or persons of what estate, degree, or condition soever they be, shall have any power or authority to MAKE any Justices of Eyre, Justices of Assize, Justices of Oyer and Terminer, or Justices of Gaol-delivery, but that all such officers and ministers *shall be made*
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by LETTERS-PATENT under the great seal, in the name and by the authority of the King for the time being. Now, I say, were there no such statute as that existing, is it possible to suppose there could be found any one person in this kingdom so fool-hardy as to presume to MAKE either a Justice of Oyer and Terminer, or a Justice of Gaol-delivery, in his own name and by his own authority? —Or if so fool-hardy a person could be found, would he not *ipso facto* be guilty of high-treason, in denying, by a clear, positive overt act, part of the King's exclusive right and title to the crown? So that this statute, which is a statute *ex gratia regis*, is made in favour of the subject, for it alters and commutes the crime of high-treason into that of a mere common, statutable offence, which latter incurs no forfeiture of lands or goods, nor works any corruption of blood, and consequently ought for these reasons to be either re-enacted in this kingdom, or at least be confirmed by an Irish act of parliament.

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With this elucidation of the principle of the statute in question, I trust, the Court of King's Bench will not hesitate one moment to declare, that as it does not appear on the record that Mr. Carleton was *made* either a Justice of Oyer or Terminer, or a Justice of Gaol-delivery, by LETTERS-PATENT of the King of Ireland, he consequently had no lawful authority to act in quality either of a Justice of Oyer and Terminer, or of a Justice of Gaol-delivery; and that therefore they cannot agreeably to their sworn-loyalty and allegiance to the King, do otherwise than reverse a judgment, which were it to remain unreversed, would, on their part, be allowing a *concurrent* sovereign jurisdiction residing as well in the subject as in the king.

The *third* and *last* error which still remains for me to assign, is grounded on the unprecedented and anti-constitutional latitude of powers, given in and by the commission under which Mr. Carleton acted.

acted. For by the omission of those attendant and necessary words, namely, *secundum legem et consuetudinem hujus regni*; by the omission, I say, of these words in the record, it should seem Mr. Carleton was authorised and empowered to give judgment against me, if he so pleased, either by the civil law, or by the laws of the Pope, or even by the laws of Mahomet: he was so authorised, I say, because his commission does not, by any means, bind him to govern his judgment *secundum legem et consuetudinem hujus regni*. And yet the insertion of these words in all commissions of Oyer and Terminer and Gaol-delivery, have, until this hour, been deemed so essentially necessary, that I defy Mr. Carleton to produce me any one precedent of authority; to the contrary, certain I am that he will not find them to have been omitted either in the Register, or in Fitzherbert, or in Staunford, or in Rastal, or in Crompton, or in Sir Edward Coke, or in Sir Matt. Hale,

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or in Lilly, or in Blackstone. And Hawkins (book ii. chap. 5. sect. 2) gives the reason why these words ought not to be omitted, "because (says he) all such justices *must* derive their authority from such instruments as are of a known, stated, and allowed form, warranted by *ancient precedents* :---and corroborating this doctrine, he afterwards observes, "that the law is so jealous of any kind of innovation in a matter so highly concerning the *safety* of the subject, as not to endure any the *least* deviation from the old, known, stated forms, *however immaterial* it may seem."

I might here add, there are strong suspicions on the face of the record to induce any gentleman of the law to conclude, that Mr. Carleton did really act without any commission at all : it is most certain, that his name was not at first put in the original commission, and the commission into which his name hath been smuggled is dated, not as all regular
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commissions of that kind are dated, namely, from the CASTLE of Dublin; on the contrary, Mr. Carleton's commission is dated from *Dublin* only, which carries with it very strong suspicions indeed, that there must have been some juggle, some deceit, or some unfair practice, somewhere or other.——But this is a matter which ought strictly to be enquired into by the proper officers of the Castle; or should it be huddled up and connived at there, it will then become a fit subject for a parliamentary investigation.

And here I should have taken leave of my merciless judge, Mr. Hugh Carleton, had his cacoethes of perverting and subverting the laws of this country ended with the assizes.——But there was one other *ex post facto* law lay in his way, and this act of parliament too it should seem he was determined should not pass unbroken by him. For by the statute of the 9th of Edw. III. ch. 5. “all Justices of Assize, Gaol-delivery, and of Oyer and Terminer,
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are expressly commanded to send all their records and processses determined and put in execution, to the Exchequer at Michaelmas every year, once to be delivered there." Did Mr. Justice Carleton send the record and process of my trial into the Exchequer within the time appointed by this statute? Or did he deliver it into the Exchequer, (after my daily and almost hourly pushing him so to do) until very late in the subsequent Hillary Term? by which means, was I not prevented from applying for a Writ of Error until the close of that Hillary Term? The consequence of which shameful and scandalous neglect on his part, was, that I could not possibly obtain a full hearing of the errors I had to assign, either in Hillary Term, Easter Term, or Trinity Term; and thus by his wanton and wilful breach of this statute, I am unjustly and illegally doomed to a confinement in a loathsome prison, not only during a vacation of almost five months, but probably until the close of the ensuing Michaelmas Term. How aptly

aptly doth Mr. Justice Carleton's neglect of his duty, on this occasion, tally with the remark Sir Edward Coke makes on this statute, when speaking in the name of the King, he delivers his mind in these words:—"We will not that our justices keep their records in their pockets *to oppress the subject*, and *to cloak their own misconduct*."

Thus having given a concise, yet clear, detail of that part of this business which fell to the lot of Mr. Hugh Carleton, as my judge, I will now put a finishing hand to it, by enumerating the several acts of violence committed on his part.

In the *first* place, By inflicting on me a heavier fine than one hundred and forty-four pounds, he violated the third article of the common-law, which expressly prescribes, that the King's fine for a breach of the peace on an indictment at common-law, shall be no more than one hundred and forty-four pounds.

Secondly,

Secondly, By imprisoning me for so enormous a length of time as three years, he hath most inhumanely and outrageously violated another of our dearest and most valuable common-law rights ; for by the common-law it is universally known, that no free man shall be imprisoned a single moment, provided he shall have paid the fine to the King.

Thirdly, By having acted under a commission without any Letters-patent from the King, he hath broken and trodden under foot the 27th of Henry VIII. c. 24. sect. 2. by which it is enacted, “ that Justices of Assizes, &c. &c. SHALL BE MADE by *Letters-patent* under the great seal of the King for the time being.”

Fourthly and lastly, By not sending the record of my trial into the Exchequer, within the time appointed by the 9th of Edw. III. chap. 5. he hath most undeniably broken that statute.

Oh excellent ! oh exemplary prosecution ! where every stage of it is marked either with some subversion of the common-law, or with some violation of Magna Charta, or with the breach of some act of parliament ! Oh happy people ! that can patiently put up with and endure an imprisonment of three whole years, because ye have been imprisoned by the big-sounding name of law ! And oh thrice happy judges ! who, after such a glaring and unchristian-like breach of your duty, can openly appear in our public courts of judicature, and even in our senate, without a blush, without a hiss, and without any dread of public censure, or the least apprehension of a public, ignominious degradation, and opprobrious dismissal from your judicial offices, which, by the common-law, was the least and mildest disgrace and punishment that could be inflicted upon you. Oh ! were our virtuous ancestors who were the founders of our common-law, and the conditors of our Magna Charta,

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those two great bulwarks of our liberties, were they now living, and could see these two pillars of our rights and liberties, thus with impunity, torn up by the roots, what must their opinion of their dastardly posterity be, in suffering the very foundations of the constitution thus to be shaken and thrown down, without a sigh, without a complaint, or without any resistance or opposition whatever, either within or without the senate. For shame, my Countrymen, rouse up your antient spirit,—settle the constitution afresh, and build up again its antient bulwarks, its antient miniments, and antient foundations. Then shall a Prosecutor for the Crown dread to swear, that his father had been murdered, whom the whole neighbourhood knows to be alive:—then shall a Justice of the Peace tremble to break his oath of office:—then shall an Under-sheriff shudder at continuing in his office longer than for one year:—then shall our grand-juries no longer be

made up of Out-laws, and of striplings under age :—then shall you be tried by a petit-jury, all of them freeholders, all of them your proper equals and peers :—and your judges shall no longer direct your juries to find a free subject of this realm guilty on *hearsay* evidence ; nor shall they longer venture to inflict a heavier fine on an indictment at common-law, than what the common-law itself prescribes, limits, and ordains ; nor shall they presume to imprison, for one single moment, either you, your children, or children's children ; much less shall they dare to imprison you for three whole years, where, of right, there ought to be no imprisonment at all. But oh ! my Countrymen, should you now neglect to renovate the constitution,—should you suffer so scandalous a prosecution as this, which I have now laid open to your view and exposed to your feelings,—should you suffer the several actors in it, I say, to pass unnoticed, uncensured, and unpunished, what will be the consequence, should

Should others do the like; and certainly if you leave the actors in this unprincipled prosecution unreproved, you will tacitly encourage others to emulate them in their audacity and insolence. Affluent in my private fortune, allied to the noblest families in Great Britain, and head, as I now am, of the house of Desmond, and as such most undubitably may be considered as the PREMIER NOBLE of this kingdom, I say, *premier noble*, for the Desmond is known and allowed to be the *elder*, while the Kildare or Leinster holds only the secondary honour of being the cadet or *younger* branch of the antient and puissant race of Fitzgeralds,—yet a work of such emprise is too arduous an undertaking for any private individual, more especially for an individual oppressed and circumstanced as I at present am, to hope, or even presume, to accomplish it by his own single efforts, or by his own single prowess. It is to you, my Countrymen, in your aggregate capacity, that such an important work of reformation

must be entrusted,—by you it must be taken in hand, otherwise there can be but little hopes to see it ever begun, much less effectually carried into execution.— Besides, look around you, I pray, and see what an ample field you leave for other future judges to trample your common-law rights under foot, if you will not boldly now tell them, that in indictments at common-law for that species of offence which is called a Breach of the King's peace, the fine to the King is clearly ascertained and prescribed to be no more than one hundred and forty-four pounds; and for the future, they shall answer in the bodies, lands, and goods, if ever they presume or dare to inflict a greater fine for that species of offence on any free subject of this realm.—A language so truly constitutional on the part of the people at large, in their aggregate or in their senatorial capacity, could not well fail to bring the judges to observe and revere the antient, well-known boundaries and limits of the common-law; nor
would

would there be any probability of their transgressing those limits for some years at least, was there only one public example to be made in the present reign, as there was in that of Ed. III. when Sir Hawkin Hanby, as before I have observed, was hanged, drawn and quartered, for having *imprisoned* a free subject of the realm of England, in open violation of the *common-law*. Look too, I pray you, at the enormous length of my imprisonment, and that too where no imprisonment conformable to the common-law of the land could have been constitutionally inflicted at all, and you see a merciless, unchristian-like judge, a judge without bowels, without compassion, transcending in acts of inhumanity and unmercifulness, even those infamous judges upon record, a Jeffries and a Scroggs.

It is true, I have brought a writ of error to reverse this merciless, unprecedented judgment, and from the substantial merits of the errors I intend to assign,

and which I have already specified in this Appeal to the Public, there remains not the least shadow of a doubt but that this judgment will be reversed in the course of next Michaelmas Term.—But oh ! my Countrymen ! will that reversal compensate me for the fourteen months imprisonment, I shall then have unjustly and unmeritedly endured ? What recompence will it make me for the loss of my health which I have experienced, and the alarming effects of which I still continue to experience ? What adequate satisfaction can it propose to me for the foul and unjust aspersions that have been thrown upon my character and reputation ? Or what reparation will it make me for my herds of cattle, and my flocks of sheep, that have been *stolen* from off my lands by the orders of Mr. Charles Lionel Fitzgerald, and which have been sold for his use and behoof, except such of them as may have been slaughtered by his commands for his own private, domestic consumption, as too evidently appears

pears from the affidavits inserted in the Appendix to this Appeal ?---In short, will the reversal of that judgment replace the timber on my estate, which hath been cut down, carried off the premises, and sold by the orders and to the use of my prosecutor and persecutor, Mr. Chas. Lionel Fitzgerald ? Will it replace those beautiful, extensive and expensive plantations, which have been grubbed up and sold by the same orders and to the same use ? Will it re-build my mansion-house, which hath been wantonly and wickedly burnt down to the ground in the dead of the night ? Will it re-plough and re-sow those two hundred acres of ground which I had sown with the choicest wheat seed that could be obtained from foreign markets, in order to supply the Dublin market with the finest wheat-flour, and that too of the growth and manufacture of this island ?----Finally, will it pay the arrears of my annuity, arrears that have been augmented in the additional sum of
fifteen

fifteen hundred pounds sterling, through Mr. Charles Lionel Fitzgerald's having dared to receive the rents of the estate by virtue of a letter of attorney from his father, when a receiver had previously been appointed by the Court of Chancery for that special purpose, of which order Mr. Charles Lionel Fitzgerald could not possibly plead ignorance, for it had been published in the Tuam newspapers, both by the receiver so appointed by the Court of Chancery, and also by myself under my proper signature. But what was the answer to these advertisements? Why, Mr. Charles Lionel Fitzgerald publicly declared, that neither the receiver nor the Chancellor himself should receive a shilling of his father's rents so long as the letter of attorney above-mentioned should remain uncanceled and unrevoked †.— This last article, I own, would not have so deeply affected me, had that undutiful, ungrateful son paid the rents he had received to his aged and almost helpless father;

† See the Appendix.

father; but on the contrary, he appropriated every farthing of those rents to his sole use and behoof; and when that aged and really penniless parent, on his death-bed, sent to that favoured son for a small relief in money, behold the uncharitableness and black ingratitude of that unnatural monster of a son, for he sent that aged, dying parent no other assistance than one solitary guinea,—a benevolence he would have extended even to a common prostitute, and which gave such a shock to his father, that his pride and heart being thus broken, as it were, by this one paralytic stroke of filial ingratitude, he gave up the ghost, dying, as I understand, for want of the necessary support of human nature, and unprepared, I fear, to settle a long outstanding account between himself and an offended heaven. This, oh! my Countrymen, in super-accumulation to my troubles was, I own, too great a load of oppression for me to bear without a sigh, and without a falling tear. And yet, well I am convinced,

vinced,

vinced, that none of these acts of violence, outrage, and rapine, would have happened, but through the security in which that ungrateful son and unnatural brother foresaw he might safely perpetrate them, by reason of the enormous length of the imprisonment I had been sentenced to undergo.—I say, “enormous length,” and in justification of that phrase, deign, oh! my country! one moment, deign, I entreat you, to compare my offence by weighing it in the opposite scale with other greater crimes and misdemeanors of which other subjects of the British empire have also been found guilty, and then candidly declare whether my offence (had I really and *bonâ fide* been guilty of it) hath merited so severe and merciless a punishment as an imprisonment of three whole years, supposing even that my judge had been vested with legal authority to have imprisoned me for such length of time as he in his DISCRETION should have thought fit. My offence, make the most of it my
enemies

enemies can, is nothing more than a simple trespass with only a *nominal vi et armis*. In contradistinction to this species of trespass, see, I pray you, what was the misdemeanor, and what was the length of imprisonment inflicted upon Sir Charles Sedley. The record states, that he was indicted for several misdemeanors against the peace of the King, which were *to the great scandal of CHRISTIANITY*, and yet his imprisonment was only for ONE WEEK, without bail; which latter words, "*without bail*," must have been nugatory, had not the judges been clearly of opinion that even his own week's imprisonment would have beenailable, but for the cautionary insertion of these words, "*without bail*." Viner's Abridg. vol. xiv. page 363. sect. 12. See too the Case of Darcy and Robinson, first siderfin, page 186. who were indicted and found guilty by verdict, for having challenged Mr. Aislaby by way of duelling; and yet the sentence awarded against them, was, that they should be committed only
for

for ONE MONTH without bail. See also the Case of Mr. Bacon (first sid. 230, 231.) who was indicted and found guilty of having suborned a third person with the offer of one hundred pounds to KILL Sir Harbottle Grimston, then Master of the Rolls: and yet the judgment, so far as it extended to the article of imprisonment, was only for THREE MONTHS. Turn your eyes likewise to fourth Burrows, 2575, in the case of Mr. Wilks, who was convicted of certain trespasses, contempts and *grand misdemeanors*: and though his trial was by way of *information* on one of the penal statutes of Richard II. in which mode of trial the judges are duly authorised to use a *discretionary* power in inflicting such punishment as they shall think fit, yet with respect to the article of Mr. Wilks's imprisonment, the court ordered him to be imprisoned only for ten *calendar* months. Nay, even for his second and subsequent offence, which the record states to have been another *grand misdemeanor*, in printing an *OBSCENE* and

and impious libel in breach of one of the penal statutes of Richard II. the court ordered him no greater imprisonment than twelve kalendar months. In short, a cloud of precedents might be produced, but I do not know of one single case, be the offence ever so great, or the misdemeanor ever so grand, in which the imprisonment hath been equal, or any thing nearly equal to mine. If this judgment, oh! my countrymen, can then be deemed by you to be consistent with the idea of equal justice, or compatible with the common-law rights of every free subject of this realm, or if it can be suffered to pass unnoticed or unpunished by the Commons in their senatorial capacity, I own I see little difference between the powers of the judges of this imaginary free country, and the arbitrary decisions of a French bastille, or the despotic adjudications of a Spanish or Portuguese inquisition. Nor do I find that Mr. Hugh Carleton affects any the least concern, or even seems to think that he hath acted wrong. So true
it

Is it, that men are always blind to their own failings and their own misconduct. I could wish however he had made some apology in the senate when he was openly attacked by Mr. Walsh, for this his uncharitable and unfeeling adjudication : and yet I see but one apology, and *that* a very bad one indeed he could possibly have made, and that is, as he was born in the midst of the slaughter-houses at Cork, and had been habituated to acts of butchery and barbarity from his earliest infancy, he must very easily have acquired in his own profession of the law a certain degree of pleasure in butchering and stabbing the very vital parts of our common-law rights, and that by a kind of irresistible sympathy of education he could not divest himself of this butchering principle, when even elevated on the seat of judgment. Weak argument! and equally applicable to the highwayman that robs you on the high road, for he too could not resist either the temptation that came in his way, or the early habits of mind
which

which had actuated and stimulated him to transgress the laws of his country.-----

But I confidently trust a time will come, and that the period is not a far distance off, when this uncharitable, this unmerciful judgment shall become a serious and most momentous object of parliamentary discussion: when agreeable to the law of retaliation, a similar punishment of three whole years imprisonment shall be inflicted upon this merciless judge himself; and when the Speaker of the House of Commons, in the very letter and spirit of the gospel, shall pronounce this sentence upon him: "With that judgment you did judge, you yourself, Mr. Hugh Carleton, shall now be judged; and with that measure you did meet, it shall now be measured to you again." Or should he, by some possible unforeseen event, escape the sentence of that national tribunal, let him remember there is still another and more awful tribunal, before which he must inevitably appear at the last day :---when possibly he may hear

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that

that dreadful and irrevocable sentence pronounced against him : “ Depart from me, thou unjust, thou merciless judge, into everlasting tortures, for he shall have judgment without mercy who hath shewed no mercy.” Nor shall he then even dare, in his conscience, to repine or murmur at the seeming rigour and severity of his sentence.—“ For just art thou, oh ! Lord, in all thy judgments, and righteous in all thy dealings with the sons of men. And so be it, oh ! righteous Lord, Amen and Amen.”

A P P E N D I X.

THIS after-publication contains little more than a small collection of *justificative pieces*, which, on account of the extraordinary length of some of the affidavits, and of the heterogeneous matter contained in other affidavits, could not be inserted in the body of *this Appeal*, without weakening the thread of the discourse; for which reason, it was judged more adviseable to print them by themselves in an Appendix to this work, as in a place much more convenient for that purpose, which is now accordingly done.

The public, to whom I address this Appeal, will be pleased to recollect, that in page 270, Hugh Herts is charged with having been actually *hired* by Charles

Lionel Fitzgerald, for the special purpose of shooting me; in corroboration of which charge the following affidavits are here inserted ;—the *first* made by Martin Redington, the *second*, by the said Hugh Herns.

JUSTIFICATIVE PIECE THE FIRST.

County of Mayo, } IN his Majesty's Court
to wit. } of King's Bench in Ire-
 land, Martin Redington, late servant to
 Patrick Randle M'Donnell, of Tower-
 more, in said county, came this day be-
 fore me, and made oath on the Holy
 Evangelists, That on Friday the twenty-
 second of September last, as this Deponent
 was returning from Rockfield in the said
 county, he met with said Patrick Randle
 M'Donnell near the house of Turlough in
 said county aforesaid, at which time the
 said Patrick Randle M'Donnell hired this
 Deponent as a servant, and brought De-
 ponent into the house of Turlough a-
 foresaid,

foresaid, where George Fitzgerald, Esq; the elder, Charles Lionel Fitzgerald, Esquire, with several others, were preparing guns, blunderbusses, swords, and a great quantity of powder, ball, swandrops and slugs; and that the said Geo. Fitzgerald, Charles Lionel Fitzgerald, and several others of them, declared that they were very glad to see Deponent, as, they said, they had business enough for this Deponent, and then mentioned, "The more men the better." Deponent saith, that on Friday the twenty-second he saw a great number of cattle in the dog-kennel near the said Geo. Fitzgerald's house, in Turlough aforesaid, the property of G. Robert Fitzgerald, Esq; which had been taken by the order of Charles Lionel Fitzgerald, Esq. That on Tuesday the twenty-sixth of September last, this Deponent saw said Robert Fitzgerald and William Fenton, Esqrs. riding on a hill near Turlough; that said George Fitzgerald, senior, Charles Lionel Fitzgerald, attended by said Patrick Randle M'Donnell,

nell, Thomas Burke, and many others, armed with guns, blunderbusses, swords, and pistols, came out of said George Fitzgerald's house in Turlough aforesaid, and called out to the said Robert Fitzgerald and William Fenton, Esqrs. and desired the said Geo. Rob. Fitzgerald and William Fenton to kiss the a-s-s of the said Geo. Fitzgerald, senior, and the said Charles Lionel Fitzgerald. Deponent saith, that on Wednesday and Thursday the twenty-seventh and twenty-eighth of September last, there was a great many people employed with crow-irons and sledges, and several implements in making spike-holes in the gables and other parts in the dwelling-house and offices of said house of said Turlough aforesaid, in order to fire at said Geo. Rob. Fitzgerald, Esq, and his people, in case he or them should offer to come near said house for the purpose of replevying the said Geo. Rob. Fitzgerald's cattle.—That on Thursday the twenty-eight of September last, this Deponent saw said G. Rob. Fitzgerald, accompanied
by

by others, come towards the house with a paper in his hand, which this Deponent understood to be a replevin, and which he delivered to a man unarmed, and desired it to be given to Charles Lionel Fitzgerald, but before said man could come over the bridge which is near the house, this Deponent heard said Charles Lionel Fitzgerald, Esq; cry out to the men in the house and offices, "FIRE AWAY, MY BOYS;" on which there was a general discharge from windows and spike-holes both of house and offices, of guns and blunderbusses; that during the continuation of the fire Patrick Randle M'Donnell charged one gun with swan-drops, and afterwards he put in a ball, which he said he would keep until he got a fair shot at G. Rob. Fitzgerald, Esq; and he frequently rubbed his hands and swore BY JESUS he hoped he should soon be happy, by having a good shot at said Geo. Rob. Fitzgerald, Esq;—That after the replevin was, by force, executed, said Pat. Randle M'Donnell often lamented he had

not got a shot at said Geo. Rob. Fitzgerald, Esq; as he was sure he would have killed him.---That on Tuesday the thirty-first of October, Charles Lionel Fitzgerald hearing that his brother Geo. Rob. Fitzgerald was gone out to visit a neighbouring gentleman, and would not return till very late at night, he went out with a party of men armed with guns and blunderbusses, to waylay his brother, and, as he said, to take him by a warrant; that he gave Deponent a blunderbuss charged with swan-drops or balls, as this Deponent believes, and he desired this Deponent to shoot said Robert Fitzgerald's horse under him, and at the same time said he himself would shoot Captain Crofton, who he called a *green bird*, as the Captain was dressed in green cloaths; not meeting with said G. Rob. Fitzgerald and his party that night, Charles Lionel Fitzgerald went to the house of Turlough, where, with a party of men armed, he lay concealed from about four o'clock on Wednesday the first of November till about

about seven o'clock on Thursday the second of November aforesaid, in the evening.—That during that time he kept the house quiet, and suffered no person to go out except George Fitzgerald, one Scott, and one Burke, and gave out that he the said Charles Lionel Fitzgerald was gone to the county of Galway; and the said Charles Lionel Fitzgerald desired George Fitzgerald to have his post-chaise drawn out and left at the door of the house of Turlough; and that he the said Charles Lionel Fitzgerald was sure when Geo. Rob. Fitzgerald would hear that Geo. Fitzgerald was by himself, he would come and see said George Fitzgerald, and then they would do his the said Robert Fitzgerald's business, or that if said Geo. Rob. Fitzgerald should go by the house, as said Charles Lionel Fitzgerald imagined he would go on some business to Ballinrobe; that he desired *all his armed men* (in which number Hugh Herns was) *would fire and shoot the horse under him the said Geo. Robert Fitzgerald, and to shoot all the people with him;*

him ; that as for Captain Crofton he himself would take care to shoot him through the head ; that when they found said Geo. Robert Fitzgerald took another road and crossed the river sooner than go by said house, said Chas. Lionel Fitzgerald seemed very much disappointed and vexed ; that during the first time this Deponent was at Turlough there was a fat cow, which this Deponent understood to be the property of G. R. Fitzgerald, Esq; brought into Turlough by Mullowney Burke and others, and was there killed by Patrick Moran and Patrick Cunnane, and by the orders of George Fitzgerald and Charles Lionel Fitzgerald ; that this Deponent often heard Charles Lionel Fitzgerald offer Burke, or any other person who would undertake it, that if they would steal away the sheep of Robert Fitzgerald, which he imagined to be three hundred and upwards, and take them up the country and sell them for the said George Fitzgerald and Charles Lionel Fitzgerald,

rald, they should have fifty of them for themselves for so doing ; and that it was fixed, that if said G. Rob. Fitzgerald could not be got out of the way on or before his going to Ballinrobe, that an express should be sent from thence to Turlough, and that before said Geo. Rob. Fitzgerald could return, his sheep and cattle should be stole by four men who undertook it, which he hears and believes was prevented by some men of said Geo. Rob. Fitzgerald's, Esq; got intelligence thereof.

MARTIN REDINGTON.

Sworn before me, at Rockfield, in the county of Mayo, the sixth day of November, one thousand, seven hundred, and eighty, one of the Commissioners of this honourable court for taking affidavits in said county, and I know the Depo-
nent.

RICH. GALLAGHER.

(A C O P Y .)

Justi-

JUSTIFICATIVE PIECE THE SECOND.

County of Mayo, } IN his Majesty's Court
to wit. } of King's Bench in Ire-
land, Hugh Herns of Castlebar, in said
county, Shoe-maker, aged twenty-five
years or thereabout, came this day be-
fore me, and made oath on the Holy
Evangelists, That on Friday the twenty-
second day of September last, this Depo-
nent was at the house of Turlough with
George Fitzgerald, Charles Lionel Fitz-
gerald, and many others, who were as-
sembled therè with guns, pistols, swords,
blunderbuffes, powder, ball, slugs, and
swan-drops; that he saw several heads
of cattle in the dog-kennel of the said
George Fitzgerald, which cattle he under-
stood to be the property of George Robert
Fitzgerald, and which had been taken off
his ground by the orders of Charles Lion-
nel Fitzgerald, and that the said Charles
Lionel Fitzgerald promised half a guinea
to

to one Owen Quin and Nicholas Walsh, if they would go to the grounds of said Geo. Rob. Fitzgerald where his fat cows were, and there steal away some of said cows and bring them to him; that the said Owen Quin and Nicholas Walsh went and stole away a fat cow, and that said cow was then killed by the orders of said George Fitzgerald and Charles Lionel Fitzgerald, and that it was made use of by said George Fitzgerald and Charles Lionel Fitzgerald and their party, at the house of Turlough. That on Tuesday the twenty-sixth day of September last, this Deponent saw said G. Rob. Fitzgerald and William Fenton, Esqrs. riding on a hill near Turlough; that said Geo. Fitzgerald, the elder, and Charles Lionel Fitzgerald, attended by Pat. Randle McDonnell, Thomas Burke, and many others, armed with guns, blunderbusses, swords, and pistols, go out of said George Fitzgerald's (the elder) house at Turlough aforesaid, and called out to said Geo. Rob. Fitzgerald and William Fenton, Esqrs. that
if

if they would come down to the field opposite the said house of Turlough they would *settle* them, and made use of several jestures and expressions too bad to be expressed before this honourable court. Deponent saith, that on Wednesday the twenty-seventh and Thursday the twenty-eighth of September last, there were a great many people employed with crow-irons, sledges, and several implements, in making spike-holes in the gables and other parts in the dwelling-house and offices of said house of Turlough aforesaid, in order, as the Deponent heard George Fitzgerald, the elder, and Charles Lionel Fitzgerald and others say, to fire at said Geo. Rob. Fitzgerald and his people, in case he and they should offer to come near said house for the *purpose of replevying the said Geo. Robert Fitzgerald's cattle.*----That on Thursday the twenty-eighth day of September last, this Deponent saw said Geo. Rob. Fitzgerald, accompanied by others, come towards the said house of Turlough with a paper in his hand, which this Deponent

ponent understood to be a replevin, and which he delivered to the constable of the parish of Turlough, who was without arms, except a stick which he had in his the said constable's hands; that this Deponent heard said Geo. Rob. Fitzgerald order said replevin to be delivered to said Charles Lionel Fitzgerald; but before said constable could come over the bridge which was between the house of Turlough and where the said Robert Fitzgerald stood, he (this Deponent) heard said Charles Lionel Fitzgerald cry out to the men in both house and offices, "FIRE AWAY, MY BOYS;" on which, this Deponent saith, there was a discharge of guns and blunderbusses from the said house of Turlough, and from the offices and out-houses of said house; that after said replevin was by force executed, and that the said Geo. Rob. Fitzgerald and his party was going away, this Deponent saw another shot fired after them from the window of the said house of Turlough. That on Tuesday the thirty-first of October

tober last, this Deponent heard that said Charles Lionel Fitzgerald was informed that his brother, Geo. Rob. Fitzgerald, was gone out to visit a neighbouring gentleman, and would not return till very late at night ; that he the said Charles Lionel Fitzgerald got together some of his men, and armed them with swords, guns, pistols, and blunderbusses, as this Deponent heard and believes, with an intent to attack the said Geo. Rob. Fitzgerald on the King's high-road ; and that the said Charles Lionel Fitzgerald sent for this Deponent, and desired he would accompany him for the purpose of attacking said Robert Fitzgerald ; but this Deponent not liking to go on such wicked design, pretended he was lame, and that he would not go to him that night ; but this Deponent went to the house of Turlough, where said Charles Lionel Fitzgerald came about four o'clock on Wednesday morning the first day of November instant, and there lay concealed till about seven o'clock on Thursday evening the second day

day of November inst. and during which time he kept the house quiet, and suffered no person to be seen or heard, except George Fitzgerald, the elder, John Scott, and Thomas Burke. Deponent saith, said Charles Lionel Fitzgerald desired said George Fitzgerald to have his chaise at the door, to seem as if he the said George Fitzgerald was going away; and that he the said Charles Lionel Fitzgerald was sure when his brother, Robert Fitzgerald, would hear that his father, George Fitzgerald the elder, was without any other person but his servant at the house of Turlough, he said Charles Lionel Fitzgerald was sure his brother, Robert Fitzgerald, would pay a friendly visit to him the said George Fitzgerald the elder; but if he did not pay that visit, he was sure that said Rob. Fitzgerald would go to Ballinrobe; and when he the said Robert Fitzgerald should hear that said Charles Lionel Fitzgerald was not in the house of Turlough, he would not think

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there

there was any danger in passing the high-road by said house ; and that then this Deponent heard said Charles Lionel Fitzgerald further say, “ Burke, you are the only person whom I can depend upon, here is a blunderbuss loaded with powder and ball for you, and when you see my brother (meaning said Robert Fitzgerald) come to or near the house, be sure you shoot the horse under him ; and that this Deponent heard the said Charles Lionel Fitzgerald also desire the other armed men, who were with him in said house of Turlough, to shoot the rest of the people that should be with said Robert Fitzgerald, and that the said Charles Lionel Fitzgerald would himself take care to shoot Captain Crofton through the head, should he accompany said Robert Fitzgerald to come near or pass by said house of Turlough, where he and his party of armed men lay hid for said purpose.---This Deponent further saith, that he heard said George Fitzgerald, the elder, and the said Charles Lionel Fitzgerald
rald

raïd, propose to Burke and others, that if they would steal away a flock of sheep which belonged to said Robert Fitzgerald, and which amounted, they believed, to three hundred and upwards, and take them up the country, and there sell them for the use of said George Fitzgerald and Charles Lionel Fitzgerald; that they the said men who would steal them should have fifty of the said sheep for so doing; that said George Fitzgerald declared he was sure that by sending to the county of Roscommon he could get four men who would perform said theft, as they had before performed an act of the same nature; and this Deponent saith, that he had such a horror of their practices that he would long ago have quitted said George Fitzgerald and Charles Lionel Fitzgerald, had he not been afraid that they, or some of their party, would have killed, houghed, or otherwise badly hurt this Deponent.]

HUGH HERNES.

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Sworn

Sworn before me, at Rockfield, in the county of Mayo, the seventeenth day of November, one thousand, seven hundred, and eighty, one of the commissioners of this honourable court for taking affidavits in said county, and I know the Deponent.

RICH. GALLAGHER.

(A C O P Y .)

MY Judges, to whom this Appeal is addressed, will be pleased to observe, that Hugh Herns at the time he made the last recited affidavit had not been turned out of one of the Volunteer Corps I have the honour to command, as their colonel ; but on the said Hugh Herns's being turned out of that corps for the reason aforesaid, and having been also disgracefully stripped of his uniform, as is set forth in page 296, he vowed to be *revenged* of
me,

me, and that he would go over to, and side with my adversary, Mr. Charles Lionel Fitzgerald.----So that although due credit may be given to the above-recited affidavit so sworn by him, more especially as it is corroborated and confirmed in almost every circumstance in the affidavit sworn by Redington, yet, I apprehend, that no degree of credit whatever, either can or ought to be given to any subsequent affidavits made by him against me, as, upon his own confession, it is evident he was, and still is, actuated by the diabolical spirit of revenge. To this truly diabolical instigation may be attributed the singularity of the evidence he gave upon my trial:---I call it *singularity*, because he was the only witness who plumply deposed, that I had restrained my father of his liberty; no other witness going farther than allowing, and that too upon cross-examination, that such *hearsay report* had been circulated in the country. There was another singularity in this man's evidence upon my trial:---

He was asked, whether I had not given orders to my servants to fire upon any army that might be sent against me, and not to give or take any quarter from such army. To this question he roundly deposed, that I had given such orders to my servants, and that those orders were not to be disobeyed, though the King himself in person should head such army so to be sent against me. I call this a *very singular* deposition, and yet it had great weight with Mr. Hugh Carleton. For I have it from undoubted authority, that he shews the notes he took on my trial, and obliquely insinuates how *friendly* he is to me, in not indicting me for treason, in compassing and imagining the death of the King. If Mr. Carleton really means me fair, let him give me the only convincing proof in his power, which is the putting his notes into my hands, in order that I may have good and sufficient grounds in law to indict this same Hugh Hems, for the false oath he hath wilfully taken in giving his evidence. But this

act of justice I cannot expect from Mr. Carleton, and as to his pretended *friendliness* towards me, it is now no matter of choice on his part, he can no longer do me any hurt. He hath already done his worst,—the toad hath exhausted all his venom, and is now become an innoxious harmless animal. He is too diaphanous, not to be seen through without the help of magnifying optics. And so far am I from desiring any friendly act on his part, I know he dreads my just resentment, which, so far as the law will justify, he may most certainly depend on. And he may rest assured, I hold him in such sovereign detestation, that I would not accept of any favour from government were it to pass through his hands. Besides, if I am guilty of treason, as he would basely and falsely insinuate, is not he his-self guilty of a misprision of felony, in so long concealing this same treason, and not bringing me to a trial for it? But I challenge him, nay, I dare him to bring me to a trial on that or any other accusation,

For had Hugh Hems, who made this deposition, been a creditable witness, yet even then to make the charge Treason there must be two *lawful* witnesses to one and the same overt-act; so that his single evidence would prove nothing at all. — But being, as he notoriously is, a man of ill-fame, his testimony, I apprehend, is not admissible in any court of judicature. I speak thus freely of the man, because there now lies upon my table two Informations taken before the Hon. William Henn, one of his Majesty's judges of the Court of King's Bench, Ireland; by the first of which it appears, that the informant, James Foy, had been offered by Mr. Chas. Lionel Fitzgerald twelve acres of land free during his life, and sixteen pounds sterling in ready money, on condition that he would make such an affidavit as *Hugh Hems had made*; the tenor of which was, "that I had given orders "to my servants to fire upon any army "that might be sent against me;" and

ho

he was farther to depose on oath, " that
 " I had confined my father in my house
 " called Rockfield-lodge, and that I had
 " caused my said father to be tied to a
 " bed-post, and had fired at him with a
 " pistol, and had lodged a brace of balls
 " in his shoulder, and had caused four of
 " his teeth to be knocked out." Providential-
 ly for me, there is a record now in the
 Chancery, by which it can be proved, that
 these identical four teeth were not in my
 father's mouth, so far back as four years
 ago. By the second information above
 alluded to, the Informant deposes on the
 Holy Evangelists, that the said Hugh
 Herns on the 24th of Decem. last, broke
 open my dwelling-house called Rockfield-
 lodge, and feloniously took and carried
 away from the said house divers goods
 and chattels, my property, specifically
 mentioned in the said information. For
 this felony the said Hugh Herns was ap-
 prehended, and committed to the New-
 prison in the city of Dublin, from which
 he

he was bailed (Mr. Charles Lionel Fitzgerald not being in Dublin) by the late Mr. George Fitzgerald. Under these circumstances, doubtless the testimony of a person of such ill-fame as Hugh Herns would not be suffered in a Court of Crown-law, where the object was to convict me of treason, more especially as I believe it is universally known, that his Majesty hath not a more loyal subject, or one more spiritedly attached to the House of Hanover in all the British Empire, than I am, and always have been.

By way of farther corroboration of the felonies committed by this Hugh Herns, I here insert the two following affidavits.

JUSTI-

JUSTIFICATIVE PIECE THE THIRD.

The Information of JAMES FOY, late of Turlough, in the County of Mayo, Yeoman, taken before the Hon. WILLIAM HENN, one of his Majesty's Judges of his Majesty's Court of King's Bench, Ireland,

Ireland, } THE said Informant being
to wit. } duly sworn on the Holy Evangelists, saith, That on or about the eighteenth day of November last, this Informant received a letter from Charles Lionel Fitzgerald, late of Fair-hill, in the county of Dublin, but now of Turlough aforesaid, Esq; desiring this Informant to come to him the said Chas. Lionel Fitzgerald, who was then at Rockfield-lodge in said county of Mayo. This Informant saith, that he, in consequence of said letter, went to the said Charles Lionel

nel Fitzgerald to Rockfield-lodge aforesaid, on the 20th day of November aforesaid, and the said Charles Lionel Fitzgerald did immediately on hearing this Informant had arrived at Rockfield-lodge aforesaid, send William Rossbottom, of Leckneen, in the parish of Turlough, and county aforesaid, for this Informant, who brought this Informant into a parlour in the house of Rockfield-lodge aforesaid, where the said Charles Lionel Fitzgerald then was, who, in the presence of the said William Rossbottom, spoke to and told this Informant, that if he would make such an affidavit as Hugh Hems, of Turlough aforesaid, brougemaker, had made; that he would give this Informant twelve acres of land rent free during the said Informant's life, and also the price of Informant's cattle, which were before that time forceably taken away from this Informant by the orders of the said Charles Lionel Fitzgerald and Cæsar French, of Fair-hill, in the county of Galway, amounting in value to sixteen pounds,

or

or thereabouts; whereupon this Informant asked the said Charles Lionel Fitzgerald, what was the nature of the affidavit that he wanted this Informant to make. This Informant saith, that the said Chas. Lionel Fitzgerald and the said William Rosbottom told this Informant, that he and every other person should be very well rewarded who should help to keep in confinement George Robert Fitzgerald, Esq; of Rockfield-lodge, in said county, then confined in his Majesty's gaol, called New-prison, in the city of Dublin. And Informant saith, that the said Charles Lionel Fitzgerald and William Rosbottom did then and there instruct and endeavour to persuade this Informant to make an affidavit, That the said George Robert Fitzgerald had given orders to his servants (one of whom this Informant then was) to fire upon any army that might be sent against him the said George Robert Fitzgerald, and not to give them, or take any quarters from
such

such army; and also to make affidavit, that the said George Robert Fitzgerald had his father George Fitzgerald, Esq; confined in his house at Rockfield-lodge aforesaid; and that he caused him to be tied to a bed-post, and had him fired at with a pistol, and had lodged a brace of balls in his shoulder; and also, that he caused the said George Fitzgerald, his father, to be dragged to a cave near said house, and caused four of his teeth to be knocked out; whereupon this Informant told said Charles Lionel Fitzgerald, that he would not make such an affidavit.— This Informant saith, that the said Charles Lionel Fitzgerald then swore an oath, that he (this Informant) should go before the Hon. John Browne, Esq; who is a magistrate for the said county of Mayo, to make such affidavit as aforesaid; and that if he did not make the same, he would send him to gaol to Castlebar; and desired the said Rossbottom to take this Informant immediately with him to the said John Browne. This Informant saith, that

that the said William Rofsbottom accordingly took this Informant with him to the said John Browne, who was then at the house of Andrew Browne, Esq; of Brefield, in said county of Mayo, about two miles distant from Rockfield-lodge aforesaid, and on their way the said William Rofsbottom used his best endeavours, by threats, fair promises, and strong liquors, to prevail on this Informant to make such affidavit as the said Charles Lionel Fitzgerald and the said William Rofsbottom had desired him to make before he left said Rockfield-lodge aforesaid. This Informant saith, that upon being brought before said John Browne, and examined by him upon oath, he dismissed him without signing to any affidavit.--- And Informant saith, he, the said Charles Lionel Fitzgerald, the next day abused this Informant exceedingly, for not having made such an affidavit as he desired ; and also said, that he would punish this Informant for not doing so ; and that he

was

was informed by the said John Browne, that what this Informant had declared to the said John Browne would serve the said George Robert Fitzgerald more than him the said Charles Lionel Fitzgerald. This Informant saith, that on the day of last, the said Charles Lionel Fitzgerald sent his servant, James Davit, to this Informant, and to John Fitzgerald, otherwise called John Stallion, James Davit, of Turlough aforesaid, Thomas Barret, of Turlough aforesaid, Peter Barret, of Turlough aforesaid, Nicholas Browne, of Fair-hill, in the county of Galway, servant to Cæsar French, of said place, Nicholas Walsh, of Turlough aforesaid, David Mitchel, of Byogunnel, in the parish of Turlough aforesaid, John Wood, of Drimdaff, in said parish of Turlough, and Thomas Foy, of Turlough aforesaid; who all came to the said Charles Lion. Fitzgerald: and being so come, he gave to said James Davit the sum of one pound fourteen shillings and three-half-

halfpence sterling, to defray the expences of this informant, and said other persons, to Longford, in the county of Sligo, the place of residence of Sir Malby Crofton, Bart. where the said Charles Lionel Fitzgerald ordered this Informant and said other persons to go, and steal away from the said lands of Longford all the cattle they could find on the said lands of Longford aforesaid; and this Informant saith, that he went with all the before-mentioned persons to a place called Tobbercurry, in his way to Longford aforesaid, and not choosing to proceed any farther on that business, feigned sickness, as also did the said John Wood and David Mitchell, who all stopped short and stayed at Tobbercurry aforesaid, about 12 miles distant from said Longford, and stayed there until the said other persons had gone to Longford aforesaid and had feloniously stolen from thence, in the night-time, by the orders aforesaid of the said Chas. Lion. Fitzgerald and his said agent,

B b

Wil-

William Rosbottom, sixteen bullocks, belonging to and marked with the brand of the said Sir Malby Crofton, Bart. and drove the said bullocks to Tobbercurry afore said, where they and said cattle arrived very early next morning, about the hour of four o'clock. This Informant saith, that he being in dread of his life, knowing the violent temper of the said Charles Lionel Fitzgerald, if he had not returned with the said persons who stole said bullocks as afore said, and aided them therein, he joined said persons at Tobbercurry afore said, and went with them and said bullocks, and brought them to the said Charles Lionel Fitzgerald, at Rockfield afore said. And this Informant saith, that the said Charles Lionel Fitzgerald having been informed by some of said other persons who had so stolen said bullocks, that this Informant and the said John Ward had feigned sickness as afore said, he, the said Charles Lionel Fitzgerald, thereupon turned this Informant
and

and said John Ward, and their wives and children, out of their said houses and lands, which belonged to George Robert Fitzgerald, Esq; and sent them adrift, except this Informant, whom he kept in custody, and guarded by the said Hugh Hems, brouge-maker, of Turlough aforesaid, in order to prevent this Informant from making known said transaction, and other wrong doings of the said Charles Lionel Fitzgerald and a desperate gang which he keeps about him and supports. This Informant saith, that the said Charles Lionel Fitzgerald afterwards sold said Cæsar French the said bullocks, he, the said Cæsar French, well knowing that said bullocks were stolen as aforesaid. This Informant saith, that by the assistance of Thomas Waddleworth, late of Mohena, but now of Lack, in the county of Galway, mill-wright, that Informant effected his escape from the said Charles Lionel Fitzgerald and his said gang, and came to the city of

Dublin, where he was taken up and put into the New-prison, for being an accomplice in stealing said bullocks.

his
JAMES X FOY.
mark.

Sworn before me, this 25th day
of April, 1782.

WILLIAM HENN.

(A C O P Y .)

JUSTIFICATIVE PIECE THE FOURTH.

The Information of JAMES FOY, of Turlough, in the County of Mayo, Yeoman, taken before the Hon. WILLIAM HENN, one of his Majesty's Judges of his Majesty's Court of King's Bench, Ireland.

Ireland, } THE said Informant being
to wit. } duly sworn on the Holy Evangelists and examined, saith, That on or about the twenty-fourth day of December last, Hugh HERNs, of Turlough afore-said,

faid, brouge-maker, and John Dudlow, of Rockfield, in faid county, did unjustly, forceably, and unlawfully break and enter the dwelling-house of George Robert Fitzgerald, at Rockfield-lodge, in the county of Mayo, Esq; and thereout feloniously took and carried away two beds and curtains of the value of ten pounds and upwards, three feather beds and bolsters of the value of three pounds and upwards, and a hogthead of cyder of the value of twenty shillings and upwards, of the goods and chattles of the faid George Robert Fitzgerald.

his
JAMES X FOY.
mark.

Sworn before me, this 25th day
of April, 1782.

WILLIAM HENN.

The Informant bound in the sum of
£ , to prosecute at the next assizes
to be held in and for the county of Mayo.

(A C O P Y .)

B b 3

JUSTI-

JUSTIFICATIVE PIECE THE FIFTH.

*By the Hon. WILLIAM HENN, Esq; one
of the Justices of his Majesty's Court of
King's Bench, Ireland.*

Ireland, } WHEREAS I have this day
to wit. } received information on the
oath of James Foy, of Turlough, in the
county of Mayo, yeoman, that on or
about the twenty-fourth of Decem. last,
Hugh Hems, of Turlough aforesaid,
brogue-maker, and John Ludlow, of
Rockfield, in the said county, did un-
justly, forceably and unlawfully break
and enter the dwelling-house of George
Robert Fitzgerald, at Rockfield-lodge, in
the county of Mayo, Esq; and thereout
feloniously took and carried away two
beds and curtains, of the value of ten
pounds and upwards, three feather beds
and bolsters, of the value of three pounds
and

and upwards, and one hogthead of cyder, of the value of twenty shillings, of the goods and chattles of the said George Robert Fitzgerald.

These are therefore, in his Majesty's name, strictly to charge and command the undernamed person to detain the body of the aforesaid Hugh Hems, if in your custody, for the felony aforesaid, until he shall be thereof delivered by due course of law, and this shall be a sufficient warrant.

Dated and sealed this 25th day of April, 1782.

WILLIAM HENN.

HENRY ROE, Gaoler.

*To the Keeper of his Majesty's
New-gaol in Dublin.*

(A C O P Y .)

HAVING thus invalidated the testimony of Hugh Hems, the only witness on my trial who swore directly to my having restrained my father of his liberty, I proceed to verify a charge I have exhibited against Mr. Charles Lionel Fitzgerald in page of the *Appeal*, where in enumerating many of the losses, damages, and injuries I sustain, by reason of the enormous length of my confinement, I simply stated that he was in possession of the receipt of the rents of the whole estate, bidding defiance to the Lord Chancellor, who had appointed a receiver for that special purpose. As many persons, from the simple, unexaggerated manner in which I stated that fact, may be induced to think, I was not sufficiently authorised to exhibit so rebellious a charge against Mr. Charles Lionel Fitzgerald, I have thought it proper here to insert the specific affidavit on which the charge is grounded.

JUSTI-

JUSTIFICATIVE PIECE THE SIXTH.

Extract of an Affidavit, made by CÆSAR FRENCH, Esq; on which an Attachment hath been granted for apprehending CHAS. LIONEL FITZGERALD, Esq; in his Majesty's High Court of Chancery, Ireland,

<i>George Fitzgerald, Esq;</i>	}	CÆSAR FRENCH,
<i>Plaintiff,</i>		of Fairhill, in the
<i>G. Rob. Fitzgerald, Esq;</i>		county of Gal-
<i>Defendant.</i>	}	way, Esq; maketh

oath, and says, That he this Deponent was on the eighth day of December, in the year one thousand seven hundred and eighty-one, appointed receiver of the rents of the said estate, in the pleadings in this cause mentioned; and that this Deponent agreeable to the terms of said order, gave security to be accountable for said rents;

rents ; and that on the eighth of December last the several tenants of the lands in the pleadings in this cause mentioned, were directed to pay unto this Deponent, as agent under this Hon. Court, all rents and arrears of rents due, and owing by them respectively, out of their respective holdings of said lands, and also that they should pay their accruing rents thereof to this Deponent from time to time, that is to say, one half-year's rent by the time the other should become due ; this Deponent saith, that immediately after this Deponent had obtained said order, he sent the same to the county of Mayo, in order to have it served on the several tenants to said estate, with a notice at the foot of each copy, so to be served on said tenants, that Deponent would, on the 27th day of December last, attend at Castlebar, contiguous to said lands, for the purpose of receiving a large arrear of rent which this Deponent was then informed was due of the tenants of said land ; this Deponent saith, that he was informed by the
 person

person whom he sent to serve said orders upon said tenants, which he believes to be true, that Charles Lionel Fitzgerald, Esq; the second son of the plaintiff in this cause, threatened the person who had served said orders in a most violent and outrageous manner, for daring to serve any orders upon said estate, and that he, at the same time, declared that no such orders should at any time be obeyed.-----

This Deponent saith, that upon Deponent's going to the county of Mayo, for the purpose of receiving said arrears of rent, pursuant to said order, he was there informed by several of the tenants of said lands that they had been compelled and forced to pay all the rents and arrears of rent which they respectively owed for their holdings upon said estate to the said Charles Lionel Fitzgerald, who informed them, as they told this Deponent, and which this Deponent believes to be true, that he was the only person properly entitled to receive said rents, and that he was empowered by letter of attorney,
from

from George Fitzgerald, his father, the plaintiff in this cause so to do, and that neither the said George Fitzgerald or the said Charles Lionel Fitzgerald would pay any regard to any order that would or should be made by this Hon. Court, or words to that or the like effect; this Deponent saith, he was credibly informed, which he believes to be true, that when the said Charles Lionel Fitzgerald found that this Deponent was appointed receiver of the rents of the said lands in the pleadings in this cause mentioned, he caused notice to be given at all the public places in the neighbourhood of said lands, desiring that the several tenants of said lands should immediately pay their rents to him the said Charles Lionel Fitzgerald, and no other person; and saith, that the plaintiff, or said Charles Lionel Fitzgerald in the plaintiff's name also, caused an advertisement to be inserted in the Connaught Advertiser, being the news-paper that mostly circulates in the said county of Mayo, cautioning all the
tenants

tenants of the said lands to which the Deponent was as aforesaid appointed receiver, not to pay their rents of said lands to any person but the said Charles Lionel Fitzgerald, who was by letter of attorney from the Plaintiff impowered to receive said rents, though this Deponent says he was appointed agent or receiver at the request, instance, and nomination of the plaintiff, and at a very great expence to Deponent ; and saith, that on this Deponent being informed by the Plaintiff that he would have Deponent appointed agent or receiver of said estate, Deponent in confidence, and upon the strength thereof, advanced to the Plaintiff in the cause a sum of two hundred pounds and upwards, the Plaintiff then appearing to this Deponent to be in the greatest distress, and often in want of the common necessities of life ; and Deponent says, that exclusive of the aforesaid sum of two hundred pounds advanced to the Plaintiff, which it was agreed that this Deponent should retain out of said rents, he was .

was at a very considerable expence in paying for the necessary orders for his appointment as receiver, and in having the same served on near three hundred tenants at a distance of one hundred miles and upwards, from the city of Dublin. This Deponent saith, he is informed, and believes, that the said Chas. Lionel Fitzgerald declared a determined resolution to drive the stock off any tenant upon said lands who should hesitate to pay his rent to him, or pay any regard or obedience to any order of this Hon. Court to the contrary, and as Deponent heard and believes, has compelled several of said tenants to pay and secure to him their rents, in direct opposition to the order served upon them to pay their respective rents to this Deponent; this Deponent saith, the said Charles Lionel Fitzgerald has retained in his service a numerous and lawless gang, and desperate and mostly outlawed persons, committing many acts of violence and outrage in the said county of Mayo, to the great annoyance and terror of
of

of the inhabitants thereof; and Deponent says, that he has attachments against several of said persons for breach of the order of this Hon. Court, and warrants against others of them for felony, and trespasses committed by them, and which this Deponent, or any one on Deponent's behalf, cannot have executed by the civil power of this county, which is overawed by the strength, number, and desperate conduct of the said Charles Lionel Fitzgerald and his associates; and Deponent says, that his life has been threatened if he should attempt to go upon said estate, or enforce the orders of this honourable court, which after a very heavy expence to this Deponent, are by the means aforesaid rendered to none effect; this Deponent says, that on or about the fourteenth day of January last, before Deponent was apprized of his danger or the adversary disposition of the said Charles Lionel Fitzgerald, and his followers and associates; this Deponent met the said Charles Lionel

nel Fitzgerald upon part of said estate, who informed this Deponent that he had received a great part of said rents, and that he would receive the remainder of them, and at the same time declared he had men enough to oppose any person that would undertake the receipt of them, or to enforce any order of this Honourable Court, or words to that effect; and sought every opportunity in his power to engage this Deponent in a quarrel or contest with him, with a view, as Deponent believes, of having some pretext to take away Deponent's life, by the intervention of his followers and lawless associates; Deponent says, he, for the reasons aforesaid, believes it will be impossible by the usual process of this court, and without some extraordinary exertion, of receiving said rents and enforce an obedience to the orders of this Honourable court, and which Defendant cannot without imminent danger of his life any farther attempt. Deponent saith, he heard
and

and believes, that said Charles Lionel Fitzgerald sent word to all the tenants upon the said lands, apprizing them, that if any of them should attempt to appear before this Deponent, or look upon him as any way warranted or entitled to receive said rent, that he would have such person punished in the most exemplary manner, and banished from the said lands, and directed them in the most peremptory and arbitrary manner not to give any attention to any order of this Hon. Court or power Deponent had, authorising him to receive any rents out of said lands; and also informing them, that he had a letter of attorney from his father to receive the rents of said estate, and that he would act as his father desired him, and enforce the payment of the rents, if Deponent had twenty orders of this Hon. Court to the contrary. Deponent says, that so adversary is the disposition of the said Charles Lionel Fitzgerald and his associates against this Deponent, for acting under the order of this

Hon. Court, that Deponent, from their repeated threats and menaces against this Deponent, cannot with any degree of safety attend his private affairs in said county, they having, in such event, declared their determined resolution of taking away Deponent's life.

CAESAR FRENCH.

Sworn before me, this 13th day of February, 1782.

J. TUNNADINE.

(A TRUE COPY.)

WHILST I am upon the subject of Mr. Caesar French, I beg leave to refer my judges, to whom this Appeal is addressed, to page 345, where I complain of the irreparable injury that hath been done to my character, by the foulest aspersions that could be invented, either by the malice or the ingenuity of man.---- Yet foul in the superlative degree as these aspersions

aspersions were, I trust, I shall now convince the world by authentic documents, that I merited no such calumny. For this purpose, the PUBLIC will be pleased to recollect, that in the month of October, 1781, advertisements were published in the Tuam paper, in all the newspapers of Dublin, in most of the public prints in London, and even in several foreign gazettes, all signed with the name of the identical CÆSAR FRENCH above-mentioned, offering a reward for apprehending me, on a charge, that a formidable party of people belonging to, and headed by me in person, had actually robbed him and several persons belonging to him, on the King's high-way, and had feloniously carried off several of his cars and horses, converting and appropriating the same to my own special use and behoof; and that divers of his car-men, and other persons by him so employed, had been taken prisoners by me, and escorted under a strong guard by my orders to my house called Rockfield-lodge, and were

there detained by force, and that it was imagined many of the said persons had been or would be there put to death.

This accusation, as it hath remained to this day unanswered by me, possibly may have gained credit in various parts of the world. Yet however painful it must have been to me, to have suffered so false and infamous a charge to pass uncontradicted, yet I deemed it more advisable to observe a distressful silence, whilst the torrent of evil tongues were too strong against me, than to risque an ill-timed refutation of it. But now *that* torrent hath subsided, and the minds of the people are disposed to listen to the truth, I cannot, with justice to myself, any longer refrain from laying before the public the real statement of the case, and it will be seen from these vouchers, that, so far from my stopping and robbing Mr. Cæsar French and his party on the highway, I was only acting as one of the assistants to the constable of Turlough, who
his-

his-self was acting under warrants against the said Cæsar French, Darcy French, and an armed party collected from different counties, and conducted in person by the said Cæsar French to Carrowkeel, (part of my late father's estate) in the county of Mayo. It will be seen, that the said warrants were to be executed on the said Cæsar French, Darcy French and party, for DIVERS FELONIES committed by them, whilst they remained at and in the neighbourhood of Carrowkeel :---it will be seen, that the said constable and his assistants not only made a caption of some of the said party, but that there was actually found on the cars of said Cæsar French part of the *stolen* goods ; such, for instance, as the skins of two sheep, with the very mark of Mr Chambers upon them, so *stolen* by the orders of the said Cæsar French, together with some of the flesh and tallow of the said sheep, packed up by the steward of the said Cæsar French, and which, by the orders of the said Cæsar French, were then

conveying to Fair-hill, in the county of Galway, the usual residence or place of abode of the said Cæsar French.

In affirmation and confirmation of the facts above-alleged, I submit the copies of the following warrants, depositions, and letters, to the candid adjudication of the public.

JUSTIFICATIVE PIECE THE SEVENTH.

WARRANT *against* CÆSAR *and* DARCY FRENCH, *and any of their Party.*

County of Mayo, } WHEREAS informa-
to wit. } tions have been sworn
 before me, George Fitzgerald of Tur-
 lough, in said county, Esq; by Thady
 Tunny, of Cashell, in said county, shep-
 herd, That on the 23d instant a great
 number of armed men, part of a large
 body of men which was headed by Cæsar
 French, of Fair-hill, and Darcy French,
 of

of Curgery, in the county of Galway, to the amount of upwards of four hundred men, which they had collected from different counties, and brought to Carowkeel in said county, came down to the lands of Cashell, and then and there forceably and feloniously carried away two sheep, the property of John Chambers, of Kilboyn, value forty shillings, and put said Informant in terror and fear of his life, by swearing if he, or any of his family, would obstruct them, they would fire at them and take their lives; and that said two sheep were brought to Carowkeel and made use of by said Cæsar French and his party, as he heard and believes; and that the skins of said two sheep were packed up on one of said Cæsar French's cars, by the orders of Mark Quin, steward to said Cæsar French, as he heard and believes, and carried off.

These are therefore strictly charging and commanding you, and each of you, to apprehend the body of said Cæsar French,

C c 4

French, Darcy French, and any of the said party, and Mark Quin, and to bring them before me, or some other of his Majesty's justices of the peace for the said county, to answer said Informant's complaint, and to be further dealt with according to law.

Given under my hand and seal, this
23d day of September, 1781.

GEORGE FITZGERALD.

*To all High and Petty Constables in
said County, especially to John
Cox and his or their assistants,
this to execute.*

(A C O P Y .)

JUSTI-

JUSTIFICATIVE PIECE THE EIGHTH.

WARRANT *against* DARCY FRENCH *and*
his Party.

County of Mayo, } WHEREAS informa-
to wit. } tions have been sworn
before me, George Fitzgerald of Tur-
lough, in the county of Mayo, Esq., by
Neal Devanny of Lack, in said county,
landholder, That as he the said Neal
Devanny was riding, and driving his cow
on the lands of Cloonconlan, on the 22d
day of September inst. he was followed
by a number of armed men on horseback,
headed by one Darcy French of Curgery,
in the county of Galway, who cocked
and presented his gun at said Informant,
and swore, if said Informant did not stop
he would lodge the brace of balls in said
Informant's body with which his said
gun was loaded. That then one
who was one of the said party,
pre-

presented the gun he held in his hands, loaden with mortal materials, such as gun-powder and leaden balls or swan-drops; that the said discharged said gun at said Examinant wantonly, wickedly and maliciously, and with an intent to take said Informant's life; said Informant saith, that he is wounded in the knee by said shot, and that his horse being also much wounded, instantly tumbled to the ground; that said Informant being brought to the ground, said Darcy French wantonly, wickedly, and maliciously made a stab of a naked sword, which he had in his hand, at said Informant, and with an intent to take away said Informant's life, had not said stab providentially went by him and entered four inches in the ground, near where Informant lay; and said Informant saith, that had he not taken to a bog, through which said party could not follow him on horseback; he verily believes and is convinced, said Darcy French, or some one

one of the party, would have taken said Informant's life.

These are therefore strictly charging and commanding you, and every, and each of you, to apprehend the bodies of and said Darcy French and his party, and to bring them before me, or some other of his Majesty's justices of the peace for the said county, to answer said Informant's complaint, and to be further dealt with according to law.

Given under my hand and seal, this
23d day of September, 1781.

GEORGE FITZGERALD.

*To all High and Petty Constables, in
said County, and especially to
John Cox and his other assist-
ants, this to execute.*

(A C O P Y,)

JUSTI-

JUSTIFICATIVE PIECE THE NINTH.

WARRANT *against* CÆSAR and DARCY
FRENCH, MILES HOSTY, *and any of*
the Party.

County of Mayo, } WHEREAS I have re-
to wit. } ceived informations on
the oath of Thomas M'Gough, of Ca-
shell, in said county, herd, That on Sa-
turday the 22d day of September instant,
part of a large body of men, headed and
brought to Cashell, in said county, by
Cæsar French of Fair-hill, and Darcy
French of Curgery, county of Galway,
Esqrs. mostly armed with guns, pistols,
and cutlasses, between three and four
hundred in number, notoriously seized
and forceably and feloniously carried a-
way some cattle, the property of John
Chambers of Kilboyn, in said county,
Esq; which this Informant was herding
on the lands of Cashell, in said county;
and said Informant saith, that one Miles
Hosty of Tuam, county of Galway, dis-
charged

charged a gun which he held in his hand, loaded with mortal materials, such as gunpowder and leaden ball, and which he discharged at Informant wickedly, wantonly and maliciously, and with an intent, as this Informant verily believes, to take away this Informant's life.

These are therefore strictly charging and commanding you, and each of you, to apprehend the bodies of said Cæsar French, Darcy French, Miles Hofty, and any of said party, and to bring them before me, or some other of his Majesty's justices of the peace for said county, to answer said Informant's complaint, and to be further dealt with according to law.

Given under my hand and seal, this
23d day of September, 1781.

GEORGE FITZGERALD.

*To all High and Petty Constables in
said County, and especially to
John Cox and his assistants,
this to execute.*

JUSTI-

JUSTIFICATIVE PIECE THE TENTH.

A LETTER written by the late GEORGE FITZGERALD, Esq; to the Rev. Mr. GARRET, one of his Majesty's Justices of the Peace for the County of Mayo.

DEAR SIR,

INFORMATIONS of various kinds, such as murder and theft, and assaults of a most atrocious nature, having been lodged before me against Messrs. French and party, I accordingly issued warrants to the constable of the parish of Turlough; he, with his assistance, went to execute said warrant and apprehended some of the people. I hear that some of the constables assistance, viz. John Scott, John King, David Saulty, Martin Redington, John Hamilton, Henry Conway, and Joseph Clarke, whose horses tired on the road, stayed, and were attacked
and

and most inhumanely beat, battered, and dangerously wounded, and that they are detained where they can have no relief, or their wounds taken care of. * * *

* † * *. The stolen goods were found on those taken by my constable. Your humanity, as well as your office, I am confident will animate you to look into these people's case, and see them delivered from their now false imprisonment, and their horses and arms to be returned to them. If any warrants have or should be issued against them, let me know of what nature they are, that, if requisite, sufficient bail may be given.

The arms, horses, &c. brought here by the delinquents who were taken by virtue of my warrant, are in my possession, and are at your disposal, I should have sent them to you this morning, but could get no one who would venture to go with them, after what they heard
of

† Words that cannot be read.

of the usage the above-mentioned people
received. I am,

Dear Sir,

With my Compts. to you and family,

Your most affectionate

humble servant,

GEORGE FITZGERALD.

Sept. 24, 1781.

(A T R U E C O P Y .)

IT having been alledged in the last-
recited Justificative Piece, that no person
would venture to deliver to the Rev. Mr.
Garret the arms, horses, &c. of such of
the delinquents who had been apprehend-
ed by virtue of the warrant of the late
George Fitzgerald, Esq; the following af-
fidavit of John Fitzgerald will corroborate
this allegation, by shewing what a state
of terror the whole county of Mayo was
in, by reason of the formidable parties
kept on foot, one while by Mr. Cæsar
French,

French, another while by Mr. Charles Lionel Fitzgerald, in order to over-awe the several magistrates of the county of Mayo from doing their duty.

JUSTIFICATIVE PIECE THE ELEVENTH.

County of Mayo, } JOHN FITZGERALD,
to wit. } of Gortlahan, in the
 county of Mayo, aged forty years and
 upwards, came this day before me, and
 made oath on the Holy Evangelists, and
 faith, That several malicious indictments
 was sworn against Deponent, by Cæsar
 French, Esq; and others, at the Summer
 assizes, one thousand seven hundred and
 eighty-one, held at Castlebar, in the
 county of Mayo, and that Deponent was
 taken by Virtue of a Bench Warrant,
 founded on said indictments; That De-
 ponent entered into a recognizance for
 his appearance at the next assizes, to be
 holden in and for said county: Deponent
 faith, That he intended appearing at the
 D d last

last M. spring P. assizes, held in Castlebar, for the county of Mayo aforesaid, and would have so done but that Deponent was informed by several people that Charles Lionel Fitzgerald, Esq; and a mob, or banditti of people that attends the said Charles Lionel Fitzgerald, had declared publicly that, if Deponent would appear to abide his Trial at the last assizes as he was bound to do by his recognizance, though he, this Deponent, should be acquitted of the charges against him in said indictments, the said Charles Lionel Fitzgerald, and his mob, or banditti would take away Deponent's life, which hindered Deponent from appearing and taking his trial as he was bound to do by his recognizance, as aforesaid.

JOHN FITZGERALD.

Sworn before me, at Ballinrobe, in the county of Mayo, this 14th day of May 1782, a Commissioner appointed for taking affidavits in said county, and I know the Deponent.

MATT. PHILPOT.

JUSTIFICATIVE PIECE THE TWELFTH.

A LETTER from the late GEORGE FITZGERALD, Esq; to the Sheriff of Galway.

SIR,

BY a letter which I received this day, I am informed that some people who were assistants to my constable in the execution of Warrants granted by me to him to apprehend the bodies of Cæsar and Darcy French, and their party, for divers felonies committed by them whilst they remained in the county of Mayo, were most barbarously and inhumanly cut and abused by said Cæsar French, and his armed banditti, which he had collected from different counties in order to commit said outrages, and lay my estate waste. That said Cæsar French and his party seized said assistants between Ball and Clare, in the county of Mayo,

D d 2

and

and that said Cæsar French himself, was one of those, (and by what I can find,) the principal man that beat and wounded said assistants in the manner they were; and that regardless of their wounds and desperate situation, he and his party reduced them to, tied them, and put them weltering in their blood on a car, and drove them contrary to all law out of the county Mayo, to the county of Galway, where they detain them in the goal of said county, in order the more to distress them, and hinder them from procuring bail to their perjured informations, and by said proceedings gain every unfair advantage against them. I am confident from what I know of you, that when you read this, and consider the illegal, inhuman and barbarous conduct of said Cæsar French, &c. through your humanity and regard to the laws of the land we live in, you will not hesitate to afford every assistance to those wrongfully and illegally confined people; and that you will either dismiss them, or transmit them to

Castlebar

Castlebar gaol, which is the gaol of the county, where said Cæsar and party, contrary to all law seized them. In order that they be bailed and set at liberty until the next general assizes to be held for said county, where I shall take particular care they shall be forthcoming, in order to bring said Cæsar French and party, to condign punishment for such illegal and and atrocious offences.—Your compliance will much oblige,

Sir, &c. &c.

Oct. 14th, 1781.

(A TRUE COPY of a Letter sent to the Sheriff of the county Galway.)

JUSTIFICATIVE PIECE THE THIRTEENTH.

The Informntion of John Scott, of the City of Dublin, Servant to GEORGE FITZGERALD, Esq; taken before

County of Mayo, } INFORMANT Saith,
to wit. } That on or about the

23d day of Sept. 1781, several examina-

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tions

tions were lodged as Informant believes before his master, the said George Fitzgerald, who is a magistrate in the said county of Mayo, at the house of George Robert Fitzgerald, Esq; his son, at Rockfield Lodge, in said county, by several persons for divers felonies and outrages committed by Darcy French, of Corgary, and Cæsar French, of Fair Hill, in the county of Galway, Esq; who at the head of four hundred men and upwards, collected from various counties in the kingdom of Ireland, came upon the estate of this Deponent's said master, and particularly on part of said estate called Cashil, tenanted by John Chambers, of Killboyne, in said county of Mayo, Esq; and took sheep therefrom, and killed and eat part of the same, and took away the remainder with the skins and tallow, and fired at with a gun, and wounded with swan drops, the person of Neal Devany, a tenant to part of Informant's said master's estate. Informant saith, That his said master, George Fitzgerald, having granted

granted three Warrants upon such examinations against the said Darcy and Cæsar French, and as many of their party whose names they could not at that time find out, this Informant's master, the said George Fitzgerald, having drawn all said Warrants in his own hand writing, and having thereby directed each of said Warrants to all high and petty constables in said county of Mayo, and especially to John Cox, the constable of the parish in which the said theft and outrage had been committed, and to his and their assistants. And Informant's said master having shewed said Warrants to this Informant and to many others, desired this Informant and many other persons to go with the said constable as his assistants to execute the same. Informant saith, That he went with said constable and other his assistants in order to execute said Warrants. And Informant saith, That between a place called Ballinamore, and a place called Clare, in said county of Mayo, the said constable, this Informant,

and other assistants, on the said 23d of Sept. 1781, met with a horse and car which had said sheep skins and tallow so taken from said lands of Cashel, thereon, and with John Kelly, who had said carr, and with Michael Quin, the servant of said Cæsar French, and Hugh Concannon, and many other persons, part of said mob, headed by said Cæsar French, and others who attended that, and said other cars which carried the baggage and ammunition chest of said party or mob. This Informant saith, That upon meeting such party, the said constable and his assistants executed said Warrants upon some of said party; that is to say, the said Hugh Concannon, John Kelly, Patrick Mannin, gardiner to the said Cæsar French, and several other persons of said party whose names Informant knows not. Informant saith, That said constable and his assistants not being able to execute all said Warrants upon all said persons, said Michael Quin and others of said party rode

rode off to acquaint Cæsar French that said Warrants had been executed upon said persons, and in or about an hour after said Warrants were executed, and as the said constable and his assistants were returning to lodge the said persons in the gaol of Castlebar, in said county of Mayo, the said Michael Quin, Cæsar French, Darcy French, Peter Darcy, John Darcy, Mark Blake, Miles Hosty, Thomas Browne, Esq; a Justice of the Peace for the county of Galway, Michael Frane, Barny Kelly, servant to Cæsar French, Mark Quin, Thomas Barret, Hugh Gallagher, Peter Hill, Thady Mannin, Mark Waldron, a person called Michael Blakeny, and other persons unknown to Informant, amounting in number to about four hundred men armed, followed and overtook said constable and his assistants, amongst whom Informant was about a mile from the place where said Warrants were executed, on their return to Castlebar, and then and there did rescue from said constable and his assistants,

ants, such of said prisoners as were in their custody, they being on said cars and not able to fly from said party. And the said Thomas Barret, Hugh Gallagher, Mark Quin, servants to said Cæsar and Darcy French, and many other persons about forty in number whose names Informant knows not, presented blunderbusses, firelocks and pistols at Informant, Michael Quin snapped a blunderbuss loaded with powder and leaden balls at Informant, which burned the priming, but did not go off, and rescued the prisoners in Informant's custody, and took this Informant prisoner, and Informant being so illegally in custody, the said Michael Blakeny came up to Informant, armed with a gun and case of pistols and a cutlass, and attempted to fire his gun at Informant, which missing fire the day being wet, he within three yards of Informant, violently threw said gun at Informant, but this Informant having avoided said gun, he said Michael Blakeny took his case of pistols out of his holsters,

holsters, one of which he presented and snapped at Informant, which burned priming, and having presented the other pistol at Informant he snapped the same which missing fire, he threw both pistols at Informant, after which the said Michael Blakeney drew his cutlafs and gave this Informant a very deep and dangerous wound on the right side of Informant's head, which cut his scull through, so that his brains could be seen thro' said cut; Informant saith that upon receiving such blow with the cutlafs he fell to the ground, but as Informant was falling, the said Michael Blakeney gave Informant another blow with said cutlafs on the pole of Informant's neck, which cut his hat through, and part of his hair, which was clubbed behind; and Informant believes had it not been for his hair, the said last blow given to Informant by said Michael Blakeney would have killed Informant; Informant saith that when he fell to the ground, some one of the said party fired a loaded pistol at Informant
and

and wounded Informant with a slug over the eye which would have killed Informant as he believes, had not the slug taken Informant slanting. Informant saith that after such treatment given to Informant, the said party pursued the rest of the prisoners taken, by virtue of said Warrants by said constable, and his assistants, and left Informant weltering in his blood, lying on the ground, and on their return from such pursuit, he heard one of said party, whom he could not distinguish from his eyes having been covered with blood, ask the said Michael Blakeny if Informant was dead, to which the said Michael Blakeny answered, he believed not, and said person, said he would shoot him, but said Michael Blakeny said he had got enough, desired said person not to waste his shot, for that he had got enough, and desired him to keep his shot for a better purpose. Informant saith, that on Cæsar French's return from said pursuit, he ordered his man to put Informant behind one of his men

men on horseback, which they did, and brought Informant in that manner to the town of Clare, about two miles from the place where Informant was so abused; Informant sayth, he was visited there by an Apothecary, who washed and dressed Informant's wound; and also, the wounds of several other persons Assitants to said Constable, also taken prisoners by the said Cæsar French, and his party; Informant saith that the said Apothecary visited Informant the next morning, and bled Informant in the left Arm, and told said Cæsar French, if Informant was not taken, particular care of that he would dye; Informant saith, that soon after the said Cæsar French, ordered Informant to be put on horseback, as aforesaid; and carried to the town of Tuam, in the county of Galway, about fifteen miles from said town of Clare; the Apothecary having informed the said Cæsar French, that Informant was not fit to ride on a Car, as the rest of the prisoners so taken, by said Cæsar French had done;

done ; Informant saith, that John Darcy, herein before mentioned, came the next day to Informant, and brought Informant from a place called the Long Room, in the public house kept by ----- Griffin, in the town of Tuam, on pretence of having Informant's wounds dressed, to a small room in said house, where the said Cæsar French was, with Thomas Browne, herein before mentioned, a justice of the Peace ; and upon Informant's coming into said room, Cæsar French, desired said John to leave the room, Informant saith, that upon said John Darcy's leaving the room the said Thomas Browne who had a sheet of paper, and pen and ink before him, asked Informant how he found himself, to which Informant answered, bad enough. Whereupon the said Thomas Browne, replied, won't you be worse if you be sent to gaol, to Galway, where you, meaning Informant, must lie until the next Assizes, and then be hanged, unless you turn King's evidence against your master, and his party ; (meaning those which Informants said
master,

master, sent with said Constable, to execute said warrant) whereupon Informant asked the said Browne, wha the wanted Informant to do, not knowing the meaning of the word King's Evidence, the said Thomas Browne answered, that he, Informant, should swear Examinations before him, as a Justice of the Peace, that Informant, the said Constable, and his assistants had no authority to come on the King's high road, to take said persons, but came to rob and plunder the said Cæsar French; Informant saith that, he thereupon told said Browne, that he could not do so, as he knew his master sent him and the other persons so taken, by said Cæsar French, as assistants with said Constable, who had Warrants to take said Cæsar French, and as many of his party as they could, upon which, the said Thomas Browne told Informant, that he should be immediately sent to Galway gaol, where Informant should be loaded with bolts, handcuffs, and neck yoked. Informant saith that the said Cæsar French, then in the presence

presence of said Thomas Browne, told Informant, that if Informant would swear the Examinations which the said Thomas Browne required Informant to do, that he, Cæsar French, would bring Informant to his own house, and have a Doctor to attend him until he was well, and would provide for Informant for the remainder of his life; but Informant saith for the reasons aforesaid he refused to swear said Examinations. Informant saith, that upon the Informant's refusal of said French in manner aforesaid, the said French the next day sent Informant with said other persons, on a car to Galway gaol; Informant saith, that when Informant was going upon the car which carried him from Tuam to Galway, Informant told said French he was not fit to travel on said car from the situation Informant was in, from his wound; to which the said Cæsar French made answer, that you might relieve yourself if you pleased (meaning by swearing said Examinations as Informant believes). Informant

formant saith, that notwithstanding the situation Informant was in from his wounds, the said Cæsar French caused Informant to be double bolted, with bolts which weighed twenty pounds, or thereabouts as Informant believes; Informant saith, that the Apothecary who attends said gaol in Galway, attended Informant for three days, and then declared Informant was in a bad way, and beyond his skill, and brought with him Surgeon Wilkins of said town of Galway, who attended Informant for about two months, and until Informant was cured; Informant saith that his bolts were taken off him by the gaoler, when Informant was considered very ill by the Surgeon, but were again put upon Informant as soon as Informant recovered. Informant saith that he was confined in said gaol bolted as aforesaid, until the third day of February last, and saith that during said confinement he was several times applied to by Peter Darcy herein before mentioned, to swear said Examinations, who also promised Informant if he would do so, that Informant should be taken out of gaol, and brought to the house of said Cæsar French, and get every thing Informant should want, but Informant still refused to do so; Informant saith that during his said confinement he was applied to by Richard Martin of Kentville, in said county of

Galway Esq; who saith he came to Informant by the directions of Mr. Charles Lionel Fitzgerald, to know if he would swear that his master, the said George Fitzgerald was taken up by force, and confined by his son the said George Robert Fitzgerald, to whom this Informant gave for answer, that he could not swear any such thing as it was not truth, as he Informant was with his said master and in the carriage with him, when the said George Robert Fitzgerald came up alone and unarmed, and peaceably and politely addressed his father the said George Fitzgerald, who went home with his said son, and had he not wished to go with his said son, he might have refused going, he having in his carriage in which informant was, three bell-musled Blunderbusses loaded with Swan drops, and a small ditto, and also three Queen Ann's muskets with bayonets, loaded as aforesaid, and three fuzees, one of which was loaded, together with a small sword, four powder horns, all filled with gun powder, one of which contained three pounds of gun-powder, besides several large bags of musket balls, swan drops and slugs, and had the said George Fitzgerald this Informant's said master been disposed to make any opposition in going home with his said son, Informant would have made use of said arms and ammunition in his said master's

masters defence; and Informant saith that he also informed the said Richard Martin, that he was with his said master all the time he had been at his said son's house, and that neither Informant or his master were under the least restraint, but could and did go whenever and wherever they pleased; Informant was also applied to by Terence Martin, late of Fisher Hill, in the county of Mayo, who said he came from the said Charles Lionel Fitzgerald with directions to have Informant bailed out of gaol, provided Informant would go to said Charles Lionel Fitzgerald, to Turlough in the county of Mayo, and do for him what he wanted. Informant saith in order to get out of his loathsome confinement he promised to go to said Charles Lionel Fitzgerald, whereupon the said Terence Martin, procured the said Richard Martin to become bail for Informant, whereupon Informant was released and the said Terence Martin also gave Informant money to bear his charges to Turlough aforesaid; but some time after having overheard the said Terence Martin swear a violent oath, and say to another person that the said Charles Lionel Fitzgerald would put Informant into prison again if he did not do what he wanted him to do, it alarmed Informant who thought it might be something which he could not do, he therefore plied the men

who were set over Informant as spies, and to accompany him to said Charles Fitzgerald with liquor, by which means he was enabled to withdraw himself from them, and made his way up to the city of Dublin in order to seek redress against the said Cæsar French and his said party.

T H E calumnies which Mr. Cæsar French so industriously and rapidly circulated in Great Britain, as well as in the kingdom, having thus been irrefragably demonstrated to be groundless in themselves, and totally unmerited on my part, and not supported by any one official document, or record of public authority, nor indeed by any other vouchers than his own advertisements published in a variety of Irish and British Newspapers, and Foreign Gazettes. I leave the world at large to form their judgment of this consummate knave, and to determine whether the character of a gross calumniator of private reputations, or that of a violent perturbator of the public peace, or lastly that of a felonious robber and sheep-stealer, doth most aptly denominate the particular super-eminent quality of the aggregate deformities of his mind and complex depravities of his heart: dismissing then the unexampled, or at least unexemplary conduct of this same Cæsar French, from any further consideration
at

at present, I shall beg leave to change the subject, by referring my judges to page 237, where I mention the burning of my mansion-house to ashes in the dead of night. But as this nocturnal *arson* is only asserted by my *ipse dixit* and that too without stating any particular circumstances of the fact; it may possibly add more weight to that assertion, if it be confirmed on oath by the testimony of a third person, who actually was on the spot, at the time my mansion-house was so consumed to ashes, for which reason I have thought proper to subjoin and here insert the following deposition,

JUSTIFICATIVE PIECE THE FOURTEENTH.

County of Mayo, } THE Information of
to wit. } Owen M'Donnel of
 Turlough, in the parish of Turlough,
 barony of Carra, and county of Mayo,
 who being duly sworn by me, one of his
 majesty's justices of the peace for said
 county, deposeth, that he the said Owen
 M'Donnel, was at Rockfield Lodge, in
 said county, late the country seat of
 George Robert Fitzgerald, Esq; on the
 8th day of April last. And this Depo-
 nent further saith, That he was present
 when George Fitzgerald, of Turlough,
 assisted by Patrick Fahey, and Peter Fay,
 both of said county, then and there took

from said Rockfield Lodge, three hearth-stones, three chimney-pieces, and the bannisters belonging to the stairs of said Lodge. Deponent further saith, That said George Fitzgerald, assisted by said Patrick Fahy and Peter Fay, then raised the flooring of the drawing, dressing, and housekeepers rooms in said Lodge; Deponent further saith, That when the said George Fitzgerald, Patrick Fahey, and Peter Fay, had gathered the said hearth-stones, chimney-pieces, bannisters and floorings of said Lodge; Edmond Kellgallen carried them to the house of Turlough, by the orders and directions of the said George Fitzgerald; Deponent further saith, That he heard and verily believes it to be true, that Rockfield Lodge aforesaid, was willfully and maliciously set on fire on the night of the 9th of April last; Deponent further saith, That on the morning of the 10th of April last, this Deponent was alarmed about four o'clock, by people crying out that said Rockfield Lodge was on fire; Deponent saith, That being then in bed, he put on his cloaths in the greatest hurry and went to Rockfield Lodge, and found it almost consumed to ashes; Deponent saith, That some time after, the said George Fitzgerald came likewise to said house of Rockfield Lodge, and in the hearing of this Deponent, declared that

that he, the said George Fitzgerald was well pleased that said Rockfield Lodge was burned, for that the Fox would have no den to put his head into, or words to that effect; And Deponent saith, That he verily believes the said George Fitzgerald, alluded to George Robert Fitzgerald, the proprietor and late owner of Rockfield Lodge aforesaid; and further saith not.

Sworn before me, this 15th of May, 1782, but I know not the Deponent.

JOHN CHAMBERS.

(A C O P Y .)

THERE are many elucidations requisite for the clearer comprehending the above-recited information, for it is to be noted, that Rockfield Lodge, or house from which the hearthstones, chimney-pieces, bannisters, and floorings were taken by the orders of the late George Fitzgerald, Esq; is distant about a quarter of a mile from the house at Turlough, to which they were carried; and that this latter mentioned house, was the place of abode where Mr. Charles Lionel Fitzgerald and his father then dwelt. It is likewise to be noticed, that the name of

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Mr,

Mr. Charles Lionel Fitzgerald, is not once mentioned in the said information. It would have been imprudent, nay, it might have been dangerous to the Informant had he mentioned the name of Mr. Charles Lionel Fitzgerald. But without expressly charging this same Mr. Charles Lionel Fitzgerald with having been a *particeps criminis*, let us see, whether he be perfectly innocent and free from all suspicion.

It is well known, that some months before the hearthstones, chimney-pieces, &c. &c. were removed from my house to *that* of Turlough, by the orders of the late George Fitzgerald, Esq; it is well known, I say, that Mr. Charles Lionel Fitzgerald had by his special orders caused the doors of my said house to be broken open, that he had gutted the said house of its principal furniture, that he had taken out the sashes from the windows and had them carried to Turlough, where he converted them into frames, for his cucumber and melon beds, that he has unslated the roof of my said house, and conveyed the slates Turlough house, and that he, with his aiders and abettors, had even purloined the brass knockers from my said dwelling house, which last mentioned achievement is made felony, by 5. G. 2. c. 10. and the parties so offending are to be transported for seven years.

IT

IT is well known that it had been agreed upon at Thurlough to set my said dwelling house on fire, some few days before it was actually burnt down to the ground. It is also well known that on the very day my said dwelling house was to have been set on fire, Mr. Charles Lionel Fitzgerald went to Castlebar, a town about three miles distant from Thurlough and there invited several persons to dine, sup, and spend the evening with him at a public house, and that he did not return to Thurlough until the day following, when and where having been given to understand, that the persons who had engaged to set my said dwelling house on fire, had not perpetrated the horrid crime, he did beat them most unmercifully with a stout walking stick he then had in his hand; lastly it can be satisfactorily proved, that three days after the said persons had been so cudgelled, my said dwelling-house was consumed to ashes in the dead of night, and that Mr. Charles Lionel Fitzgerald in order to have an *alibi proof* that he was not present at the burning of it, had invited a great number of his acquaintance to dine, sup, and spend the evening with him at Thurlough house, though one person only, a tanner by trade attended on this general invitation.

IN this short historical account of the conduct of Mr. Charles Lionel Fitzgerald, I have contented myself with giving a plain unvarnished statement of circumstances just as they occurred, but whether they will create any degree of suspicion, that Mr. Charles Lionel Fitzgerald was aiding and assisting, or only privy to the burning of my said dwelling house, or whether he had any hand in it at all, I leave at present to the candid and impartial opinion of that public to whom I have addressed my appeal.

Before I draw this *Appendix* to a conclusion, it behoves me to wipe away every aspersion, which hath been falsely or unjustly thrown on my character. One of the many Charges propagated against me, a charge indeed too generally believed to be true, at the same time that it is an absolute falsehood, is that I had *forcibly broken* open the Prison at Castlebar, a few days after my Committal to it. In order then to undeceive the Public, and to justify myself before their Tribunal, I will set this matter in so clear a light, that the most unintelligent Person in the Kingdom, with regard to points of Law, shall be enabled to judge with certainty, and precision, whether that charge can with any reason, justice, or propriety be laid at my Door. To this end, it is
 necessary

necessary to observe that our Crown-Law Courts know and acknowledge three distinct species of Escapes, namely, the forcible, the negligent, and the voluntary. The *first* of these Escapes is never laid to the account of the Goaler, nor is he punishable for it: he is liable however to answer for the two last, with this difference indeed, that for the *negligent* Escape he shall not forfeit his Office, but for the *voluntary one*, he shall: in the *former* case too, he may shew any special, justificative matter in Extenuation, and even in Purgation of the Offence; in the *latter*, he is not admissable to plead any Exculpation: there is also a farther difference to be made, for where a Gaoler hath *negligently* suffered his Prisoner to escape, he may on a fresh pursuit retake him, wherever he finds him; but where he hath *voluntary* suffered his Prisoner to escape, he can no more justify the retaking him, than if he never had him in custody before, because by his own free consent he hath in construction of Law, admitted, that he hath nothing to do with him.

With this Elucidation respecting the essential difference there is between one species of Escape, and another, I proceed to give a summary statement of the particular Occurrences which gave Rise to
the

the false and injurious report of my having *forcibly* broken the Prison at Castlebar, between eleven and twelve o'Clock at night.

On Tuesday the 11th of September, 1781, I was committed in execution to the safe custody of — Kelly, the keeper of Castlebar gaol. I had not been two hours in his keeping, when Mr. Charles Lionel Fitzgerald, took the keys of this prison from him, and insisted upon being my gaoler and keeper. It is to be noticed, *en passant*, that this Kelly is a plain, simple, honest man as to his general character, but so illiterate, as neither to be able to read or write, and so cautious of offending a person of Mr. Charles Lionel Fitzgerald's known ferocity, savageness, and cruelty, that he made little or no opposition in delivering the keys of the prison to him. Mark then the sequel. 'Mr. Charles Lionel Fitzgerald, with two the most desperate men in the County of Mayo, mounted guard, under pretence of preventing me from breaking open the doors of the gaol: They had posted themselves in a room adjoining to that which was allotted for my apartment. The weather was remarkably hot, yet as they had understood that by making a fire in their own room, it would smother my apartment with smoak to such a degree,

as

as to render it impossible for me long to continue without suffocation, they still kept puffing and blowing the fire in their own room, till Kelly's wife taking compassion of my dreadful situation, most peremptorily insisted upon having the fire put out. Disappointed in this their first intention of suffocating me to death, their fertile invention suggested another, and as they thought more effectual mode of suffocation: this was, by throwing down thro' the chimney-top, every sort of filth and ordure they could collect together, and thus compel me in my own defence, to the distressful alternative of either breaking the prison by force and violence, or of becoming a martyr to the horrible stench, and noxious effluvia they had by this stratagem introduced into my apartment. Little did they know, that had I in this situation forced open the prison gates, I should have been justified, and the act itself on my part would have been lawful. For Coke, 2 Inst. 590, clearly shews that by the common law of this realm, a prisoner may *break a prison* for the safe-guard of his life, notwithstanding the statute *de frangentibus prisonam*, and he supports this doctrine by a maxim taken from *the Civil Law*, from which we are to conclude, "that whatsoever any one hath done for the meer safe-guard,

and

and necessary defence of his own body, *id jure fecisse videtur*. But though I very well knew I should have been justified by the laws of my country, Had I under these circumstances broken the prison, yet of two evils which then presented themselves to my imagination, the lesser, certainly must have appeared to me the more eligible; accordingly, I determined to abide the risk of being poisoned by the noisome and deleterious vapours, which were incessantly pouring into my apartment, and which there was a possibly chance of surviving, rather than to force open the prison gates, and of a certainty be butchered and mangled by one or both of those desperate bravoës, who Mr. Charles Lionel Fitzgerald, had set over me, in quality of my nocturnal guards, wdith their bayonets fixed to the tufils. There can be little or no doubt, but that he had given them positive orders to put me to death, in case they should happily have caught me in the act of breaking the prison, when I positively assert that on the first night of my imprisonment, they twice attempted to break into my bed-chamber, most probably to murder me, and must have carried their point, had they not been prevented by two other prisoners, who in a firm tone of voice resolutely declared they would alarm
the

the house, in case any farther attempt were made to break into my apartment. I have said, that the intent of these two ruffians was most probably to murder me, what less could I well have expected, especially as I knew the character of one of them, and it is fitting his character should be made known to the public at large. The person I alluded to, is one Wm. Burke by name: he had been lately taken into the service of Mr. Charles Lionel Fitzgerald, and the transcendant infamy of this man's character had, without any other previous knowledge of him, recommended him to that service.

The history of this man is perhaps the most barbarously inhuman that ever disgraced the Annals of Humanity. He had committed a Rape upon a Child about eleven Years of age, and previous to the actual committal of it, he had with his knife ripped open a certain part of the Child's body, too shocking as well as too indecent to be mentioned in Print. The publicity, and atrociousness of this crime roused and stimulated many well disposed Persons, to bring the Criminal to condign punishment: in the number of these well-disposed Persons Mr. Kirwan stepped forward, by repeatedly advertising in the Tuam Papers, a full length description of this same identical William

liam Burke, at the same time offering a Reward of fifty Pounds for apprehending him. These Public, these repeated advertisements first brought this William Burke to the knowledge of Mr. Charles Lionel Fitzgerald, and consequently could not fail soon to recommend him into his service. Accordingly Mr. Charles Lionel Fitzgerald, in a very short time so contrived matters, that Mr. Kirwan gave up all thoughts of prosecuting Burke, and ceased from Advertising him any longer. But whether he thus stopped short, in the laudable pursuit of Public Justice, through any tampering with Mr. Charles Lionel Fitzgerald, or through any dread of incurring his heavy and dreadful displeasure, I do not pretend to say, it is certain however that this identical William Burke, was one of the Russians who twice made an attempt to break into my apartment with a drawn bayonet, on the two first nights of my confinement, when providentially for me, he was each night prevented from carrying the blood-thirsty orders of his Master into execution.

With such a nocturnal Guard over my Person, with instruments of Death, entrusted to his discretion, what else but murder could I have expected at his hands

hands, had he succeeded in forcing open the Door into my Bedchamber, in the dead of Night.

In the course of the above mentioned remarks, I have shewn that I should have been justified by the law of the Land, had I even broken the Prison by force and violence, but it still remains for me to shew that, I did not break the Prison at all. It is Very true I walked out of Prison, but then it is equally true, that the Door of the Prison was open, and in that case, where is the Prisoner to be found, that would not have acted as I did?

I have already observed, that I was committed to Prison very late at night, on Tuesday the 11th of September, 1781; on the Friday following at Noon-Day, a beam of Liberty seemed to dawn upon me, for on a sudden, I perceived the Prison Gate, had, through carelessness (it is to be supposed) been left wide open. My two nocturnal Guards and their Master-Goaler, Mr. Charles Lionel Fitzgerald, who had sat up the whole Night drinking, and carousing together, had retired to take the ordinary refreshment of Sleep, and this seemed to me the precise moment pointed out by the hand of Providence to save my Life, which was every hour in imminent danger to be

F f

taken

to be taken away, so long as I continued in the custody of so daring and desperate a Triumvirate. I frankly own, I instantly seized the opportunity, I caught Time by the Forelock, and without any resistance, or opposition whatever, very peaceable and quietly walked out of Prison, nor was there any fresh pursuit made after me. Circumstanced as I was, where is the Prisoner to be found, that would not have acted as I did? here was no *forceable* escape on my part, and if there was a *negligent* one on the part of the *real* Goaler, he had justificative matter sufficient to shew in his exculpation, for Mr. Charles Lionel Fitzgerald, had possessed himself of the Keys of the Gaol, and in so doing made himself Goaler *de facto*, as and such became ultimately responsible for the safe-keeping, and forthcoming of my Person, whenever he should be legally called upon to give an account of his Goalership. But putting the case that William Kelly, who was the Goaler *de jure*, was responsible for this *negligent* Escape; still there would have been no injury done to him. For as the offence for which I had been Committed was only a Trespass the Fine or Forfeiture he would have thus incurred, could not have amounted to more than

than ten pounds sterling, consistently with the 10th H. 7. c. 19. and most assuredly I could not in common justice have suffered him to pay that sum out of his own Pocket, so that in fact no injury would have been done to him.

I am well aware that though I have stated this Escape to have been a *negligent* one, it may be objected, that I have mistated the fact, because it clearly appears upon the Face of the Lord Chief Justice's Committment of me to the New-Prison, "that I had by *force and violence* enlarged myself, and made my Escape out of Castlebar-Gaol, on the fourteenth Day of September, 1781."

To this objection, it will be sufficient for me to reply, that the Lord Chief Justice was obliged to ground and regulate his Commitment of me, conformable to the express Letter of the Information, that had been sworn before him, and if the Informant would abide the risk of perjuring himself, by falsely deposing on Oath that I had made a *forceable* Escape, his Lordship could do no other than commit me for a *forceable* Escape, so sworn by the Informant. It is incumbent on me, then to lay open and expose the whole mystery and combination, by which this false Information was at first obtained. For

this end, it must be noted that Mr. Charles Lionel Fitzgerald, Mr. Patrick Randall Mc Donal, an Attorney at Castlebar, and a Mr. Galagher, of the same Town, having sent for William Kelly, the Gaoler of Castlebar *de jure*, to attend them, they produced an Information ready drawn charging me (*inter alia*) with having broken open the Locks of the said Gaol, and thus by force and Violence having effected my Escape. This Information having been read by one of them to said William Kelly, he refused to make a Deposition upon Oath, alledging the principal Charges in it were not true. On this peremptory refusal, they told him that as he was so very Squeamish and strait-laced, they would draw him another Information, that should suit his Palate. Accordingly they produced him the same identical Information, pretending and assuring him that they had altered such parts of it as he had before objected to. This Information, with the pretended alterations in it, having been read to him, (for I have already observed that he himself can neither read nor write) and the principle matters to which he had objected, not having been read to him, he made no scruple to swear to the truth of the Contents. And this is the Information which was pro-

produced to Lord Chief Justice Annaly, and on which his lordship issued his precept to the Sheriffs of the City of Dublin, empowering them, or either of them, to receive, and detain me in Custody, as appears by the annexed Copy of my Commitment.

*By the Right Honourable JOHN LORD
ANNALY, LORD CHIEF JUSTICE
of his Majesty's Court of King's Bench
in Ireland.*

*To the Sheriffs of the County of the City
of Dublin, or either of them.*

Ireland to wit. } THESE are in his
Majesty's name strictly to charge and
command you, and each of you, im-
mediately on sight hereof, to receive into
your Custody the Body of George Ro-
bert Fitzgerald, of Rockfield, in the
County of Mayo, Esq; charged on Oath
on a Bill of Indictment found at a Ge-
neral

neral Affizes, and General Gaol delivery held for said County, and found Guilty of an Assault upon, and false Imprisonment of George Fitzgerald, his Father, and was sentenced by the Court to be imprisoned three Years, and to pay one thousand Pounds sterling, for said Offence, and that in Execution of said Sentence, and Judgment, said George Robert Fitzgerald was committed to the Gaol of said County, in the Custody of the Sheriff of said County, and that the said George Robert Fitzgerald on the fourteenth Day of September last, by Force and Violence enlarged himself, and made his Escape out of said Gaol, and the Body of him, the said George Robert Fitzgerald, safely keep in your Custody, untill he shall thence be delivered by due Order of Law, hereof fail not at your Perils, given under my Hand and Seal this 18th Day of October, 1781,

A N N A L Y.

(A true Copy) HENRY ROE, Gaoler.

I have

I have some observations to make upon this commitment, but before I touch upon that head, it will throw more light upon this dark and deep-laid plan of operations, if I set forth a bold, and in my opinion; a *fraudulent* manœuvre that was practised in obtaining the above-mentioned fabricated affidavit. In the town of Castlebar, there is a commissioner duly authorized to take affidavits, his name is Richard Galaghar. This commissioner hath a nephew dwelling also in the same town, whose christian and surname are exactly the same with those of his uncle. And it is well worth noting, that the deposition of William Kelly, the gaoler, was taken before Richard Galaghar, the nephew, who is no commissioner, nor justice of peace, or other magistrate, officer, or minister, authorized to take affidavits. The Court of King's Bench hath not yet been apprized of this juggle and imposition: there are, however, some other facts which have come to their knowledge. For in last Trinity Term, Kelly, the gaoler, appearing in that court, in obedience to an order issued the preceding Easter Term, and the information above-mentioned having been read to him, he positively insisted that it was not the same information which had been read to him
at

at Castlebar, and to which he had there been sworn before Mr. Galaghar, and in particular, that in the information read to and sworn by him at Castlebar there was no mention made that the prisoner, George Robert Fitzgerald, Esq; in the act of making his escape, had fired any shot at any person whatever, or that he had any men or body of men whatsoever, in arms to favour escape, or that he had *forcibly* broken open the lock, or locks of the gaol, as is falsely stated and charged in the said information, and that if any such mention had been made in the said information, and had articulately and distinctly been read to him, he certainly would not have sworn to the truth of any one of those charges, because he knew they were absolutely false and untrue.

Having thus given a few specimens of the genius of my adversaries for intrigue, I shall beg leave to follow them to Lord Annaly's, in order to detect another imposition they practiced upon his Lordship, to induce a belief, that I had been found guilty of an assault upon, and false imprisonment of my late father at a general assizes and general *gaol delivery* holden for the County of Mayo, in the Summer assizes, in 1781. Now the real truth is, I could not possibly have been found guilty of
that

that trespass at that general *gaol delivery* because I have shewn in the body of my appeal to the public, page 170, that the examination of Mr. Charles Lionel Fitzgerald, on which the whole indictment is grounded, was not taken before Mr. Justice Jordan, *prior* to the second day of the Summer assizes abovementioned, and consequently as I was not in prison at the time that the Judges on that circuit opened their commission at Castlebar, I could not be found guilty of the trespass under their commission of *gaol delivery*. For a commission of *gaol delivery*, is a patent in the nature of a letter from the King, appointing and authorizing certain persons to deliver his gaol at some certain place, of the *prisoners actually in it*, but the Judges so appointed, have nothing to do with any person not in custody of such prison; so that when my adversaries set forth, that I was found guilty at a general *gaol delivery* of the County of Mayo, they mistake and misrepresent the fact, in order to make it appear to the Lord Chief Justice, that I had been some time in prison, before the coming of the Judges to the last Summer assizes at Castlebar; and this misrepresentation is a wilful, premeditated act calculated on their parts, to conceal and gloss over the im-

impropriety, and anti-constitutionality of Mr. Justice Jordan, in having granted his warrant to apprehend me, whilst I was sitting on the business of the County of Mayo, in the quality of a Grand-Juryman; which circumstance had it come to the knowledge of the Lord Chief Justice, his Lordship, out of his known love for public justice, might probably have sent for me to have come to him, for the purpose of hearing from my own mouth a true statement of this so singular a case, and upon the extraordinary merits of it might *possibly* have been induced to have admitted me to bail. I say "*possibly*," because nothing but the most unprecedented and unparalleled merits of my case would have induced his Lordship to depart from the general line of practice.

Thus have I brought forth to public view a variety of facts and circumstances which accumulatively taken, will, I trust, entirely exculpate me of the charge of having broken the prison by force and violence, and with respect to any other departure from a prison, on the part of a prisoner who is in custody only for a trespass, it is not unlawful; and if by walking out of the gaol at Castlebar, when the door was wide open, I broke no law of the land, certainly if I am not commendable,

able, at least I merit no censure on that account, and as I only seek to rescue my character from aspersions and censures which I have not deserved: So having effected that important end respecting thy falsehood of the charge of my having made my escape from the prison by force and violence, I shall dismiss this subject, which already hath not only taken up too much of my own time, but I fear it will have trespassed too much on *that* of the reader.

There is one, and only one more accusation, falsely laid to my charge, which it is a duty incumbent on me to see that it be cleared up, as well to the entire satisfaction of the public in general, as to myself in particular. I allude to the body of my appeal to the public, page 231, where Major Pomeroy in his letter to me dated Nov. 6, 1781, says "that as Cannon *was* mounted at Rockfield on A
" REGULAR PLATFORM, and other preparations made there FOR DEFENCE,
" and as it was the current report of the
" country that a considerable resistance
" would probably be made; I thought it
" my duty to make SUCH REPORT to
" government, which I did immediately
" by express to Mr. Secretary Eden."
From this report of Major Pomeroy, is there any military man in Europe
but

but, must conclude, that I was in a state of actual rebellion against my lawful liege Sovereign? Certainly no other interpretation could be reasonably put upon it, and it was principally, nay I might say entirely upon the grounds of this report, that government sent orders for this additional military force. It must have been grounded, upon Major Pomeroy's report, I say "*entirely*," because weak as government then avowedly were, yet they were not so insane as to put any serious confidence in that part of the information they had received from so notorious a liar, as Lord Altamont, and I am justified in calling him by that odious denomination, because in the true spirit of a liar, he falsely, wilfully, and maliciously represented me to government, without any just cause whatever, as in the actual state of rebellion. Orders for so expensive military force having been sent to Rockfield-lodge, in addition to that which was already stationed in the County of Mayo. Maj. Pomeroy, therefore, must not be surprized if I thus publicly tell him that the report he made to government was false, false, I say in every particular: And I thus publicly call upon him to declare, what idea it was he intended to convey to government, by the words, "cannon (in the singular

gular number) that was mounted at Rockfield on a REGULAR PLATFORM." I call upon him to specify the identical spot where this cannon (in the singular number) *was* mounted? I call upon him, to give a draught or drawing of this same REGULAR PLATFORM, in some one of the public prints. I call upon him to specify what other preparations for defence were making at Rockfield-Lodge, and as by this false report of his, he hath been the occasion of putting the nation to an enormous expence in infantry, cavalry, and artillery; I call upon him to demand a court-martial, in order to exculpate his conduct on this occasion, if he possibly can, which if he refuses, or neglects to do, I pledge myself to the public, that I myself, will call aloud for a court-martial to try him, for a matter of a much more serious nature, which, for his own sake, and for his own character as a military man, I hope he will not constrain nor compel me to do. Major Pomeroy will see by the active part I am now taking in this business, that I am determined no longer to lye under the foul suspicion of ever having acted as a rebel to my King, or in any situation of life as unbecoming a gentleman of rank, birth, and fortune. Nor is it just that I should, for I am so perfectly clear of my own innocence

nooence in this respect, and so thoroughly am I satisfied of the honour and veracity of Col. Longfield, who had the command of the artillery that was sent to Rockfield-Lodge, that I would submit it to his single decision whether there was or was not any appearance of any fortification, regular platform, or other military preparations for defence, that could justify the the sending so expensive an army, and so powerful a train of artillery to Rockfield. I have only to add, that if Major Pomeroy is pleased to take umbrage at any thing I have here advanced in my own justification, I am ready to give him every satisfaction in my power, whether it be by that species of single combat which is justifiable by an ancient custom of this realm, or by any other mode of amends, consistent with the laws of this kingdom, and at the same time not derogatory to the character and essence of a gentleman.

This base, this insidious attack upon my life, my property, and my character, being thus warded-off, and I hope defeated, I will conclude this appendix with the honourable testimony of the peaceable, orderly, and quiet deportment of the Castlebar Volunteers under my command, against whom it seems the same false and malevolent report hath been made to government as was made against me,
and

and probably by the same diabolical and revengeful spirit, that pervades the whole Altimont family.

Castlebar, February 8th, 1782.

WE the Inhabitants of Castlebar, hearing Affidavits have been transmitted to Government, injuriously setting forth that the Volunteer Corps, commanded by George Robert Fitzgerald, Esq; are in a state of Rebellion, to the terror of the Neighbourhood, and the subversion of all Order, think ourselves called upon to certify the peaceable behaviour of said Corps.—and we do hereby declare that we know not, neither have we heard, that they are guilty of any riot, outrage, or breach of the Peace.

GEO. BINGHAM, Portrieve,	JOHN PELCH,
SAM. ORMSBY,	JOHN BURKE,
JOHN O'MALLY,	JOHN HENNEN,
WILLIAM CROWE, Recorder,	HEN. SHERIDAN,
JOHN THOMPSON,	ROBERT ORMSBY,
GEORGE BELL,	JAMES HANSBROW,
T. THOMPSON, Clerk,	PATT CAWLEY,
THOMAS ELLIS,	PETER FUREY,
CONSTANTINE SLOPER,	MICH. JENNING,
TERENCE BOYLE,	MICH. SHERIDAN,
	POTTER FINCH,

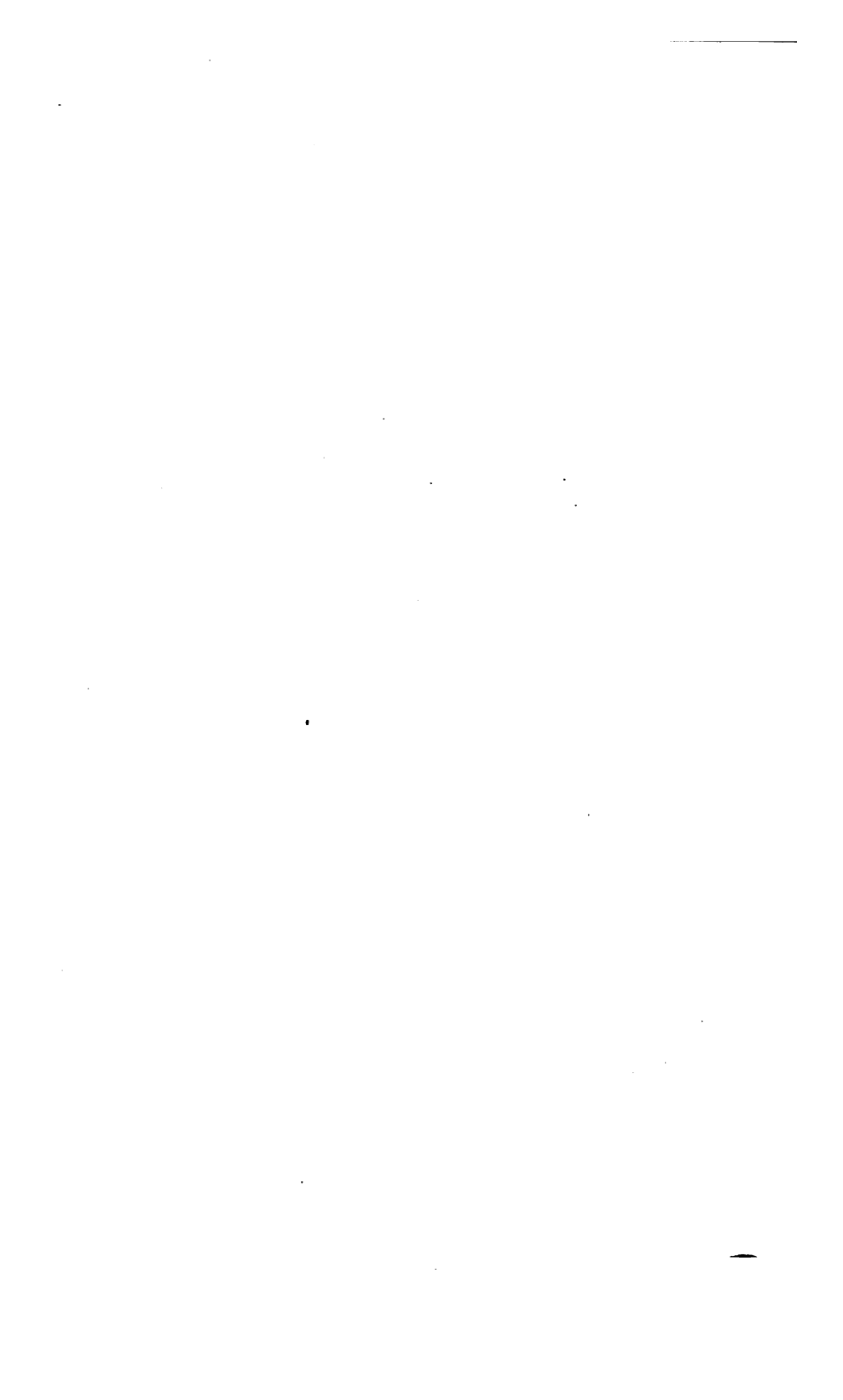
F I N I S.



E R R A T A.

- Page 4 line 4 have, *read* to have.
 6 line 23 overcame, *read* overcome.
 13 line 2 of the yearly rent of 600*l.* per ann.
 certain freehold-lands, *read* cer-
 tain freehold-lands of the yearly
 rent of 600*l.* per annum.
 16 line 2 him, *read* himself.
 30 line 16 and thousands filial, *read*, and a
 thousand.
 36 line 12 agente ocier caro, *read* agente ocior
 euro.
 44 line 11 rob her, *read* rob me.
 53 line 1 quandum, *read* quondam.
 59 line 1 now, *read* he now.
 59 line 18 hamorrhoides, *read* hæmorrhoides.
 84 line 24 comlng, *read* coming.
 100 line 20 touch, *read* to touch.
 107 line 5 L. C. *read* C. L.
 111 line 20 aud, *read* and.
 127 line 9 finishing to them, *read* finishing hand
 to them.
 132 line 1 is such case, *read* in such case.
 136 line 16 on judgement, *read* in judgement.
 137 line 11 fait à a hâte, *read* fait à la hâte.
 138 line 20 respect, *read* repast.
 141 line 19 3d of April, *read* 7th of September.
 141 line 22 November, *read* April.
 145 line 17 in one part, *read* on one part.
 154 line 15 deprived me of mine—make a full
 stop at mine.
 161 line 21 3000*l.* *read* 1000*l.*
 184 line 22 castigata, audita, *read* castigatque,
 auditque.
 188 line 24 Brabson, *read* Brabazon.
 192 line 20 eadem est ratione, *read* eadem est
 ratio.
 276 line 9 George Robert had not, *read* the
 said letter had not been.
 282 line 14 for indictments, *read* for in indict-
 ments.
 283 line 24 oountry, *read* country.

- 284 line 9 eyhomris, *read* ephemeris.
 309 line 10 Robert Lynch, *read* Henry Lynch.
 311 line 2 per legale indivium, *read* per legale
 judicium.
 349 line 15 his own week's imprisonment, *read*
 this one week's imprisonment.
 365 line 22 go out, *read* did go out.
 370 line 16 Charies, *read* Charles.
 376 line 20 affivit, *read* affidavit.
 377 line 8 his teeth to knocked, *read* his teeth
 to be knocked out.
 384 line 6 on the blank day of, *read* the 19th
 day of Dec. 1781.
 384 line 19 John Wood, *read* John Ward.
 385 line 16 John Wood, *read* John Ward.
 389 line 1 John Cudlow, *read* John Ludlow.
 412 line 8 herd, *read* herdman.
 417 line 17 next, *read* next.
 418 line 1 last M. spring, P. affizes, *read* last
 spring affizes.
 431 line 3 wha the, *read* what he.
 434 line 19 nformant, *read* informant.
 436 line 20 in the kingdom, *read* in this king-
 dom.
 440 line 27 conveyd the flates Turlough-house,
read conveyd the flates to Tur-
 lough-house.
 442 line 9 dwollin, *read* dwelling.
 442 line 19 a charge indeed too generally be-
 lieved—eraze the word 'too.'
 446 line 18 who Mr. Charles Lionel, *read* whom
 Mr. Charles Lionel.
 line 20 guars, *read* guards.
 line 21 tufils, *read* fusils.
 line 24 happily, *read* haply.
 450 line 19 as and such, *read*, and as such.
 459 line 9 respecting thy falsehood, *read* re-
 specting the falsehood.



SEP 10 1953

